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Doc Canada. Combines Legislation, Joint Committee on,  
1951(2) 555

HOUSE OF COMMONS

Fifth Session—Twenty-first Parliament

1951

(Second Session)

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JOINT COMMITTEE OF THE SENATE  
AND THE HOUSE OF COMMONS

ON

COMBINES LEGISLATION

Joint Chairmen—The Honourable Senator A. L. Beaubien  
Mr. James Sinclair, M.P.

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MINUTES OF PROCEEDINGS AND EVIDENCE

No. 9

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THURSDAY, NOVEMBER 29, 1951

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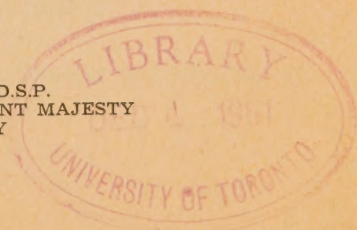
WITNESSES:

Mr. J. W. Preston, Secretary-Manager, Canadian Pharmaceutical Association;

Professor H. J. Fuller, Ontario College of Pharmacy;

Mr. J. Crawford Gould, President, Drug Trading Company.

OTTAWA  
EDMOND CLOUTIER, C.M.G., O.A., D.S.P.  
PRINTER TO THE KING'S MOST EXCELLENT MAJESTY  
CONTROLLER OF STATIONERY  
1951







## MINUTES OF PROCEEDINGS

THURSDAY, November 29, 1951.

The Joint Committee of the Senate and the House of Commons on Combines Legislation met at 10.30 o'clock a.m. The Joint Chairmen, the Honourable Senator A. L. Beaubien and Mr. James Sinclair, M.P., were present, Mr. Sinclair presiding,

*Also present:*

*For the Senate:* The Honourable Senators Aseltine, Burchill, Dupuis, Fogo, Golding, Horner, Vaillancourt.

*For the House of Commons:* Messrs. Beaudry, Boucher, Carter, Cauchon, Mrs. Fairclough, Messrs. Fleming, Fulton, Garson, Harkness, Harrison, Hees, Jutras, MacInnis, Mott, Murray (*Oxford*), McLean (*Huron-Perth*), Roberge, Shaw, Stuart (*Charlotte*), Thatcher, Welbourn.

*In attendance:* Mr. J. W. Preston, Secretary-Treasurer, Canadian Pharmaceutical Association Inc.; Professor H. J. Fuller, Ontario College of Pharmacy; Mr. J. C. Gould, President, Drug Trading Company.

The Chairman read a letter dated November 28, 1951, from Mr. J. W. Preston, addressed to the Clerk of the Committee, respecting the production of certain statistical information which the representatives of the Canadian Pharmaceutical Association Inc., had been requested by the Committee at an earlier meeting to produce.

Mr. Shaw tabled a copy of a circular letter, dated November 5, 1951, from the Canadian Pharmaceutical Association Inc., which had been sent to all their members throughout Canada.

It was ordered that the said circular be printed as *Appendix A* to this day's Minutes of Proceedings and Evidence.

Mr. Thatcher moved that the adoption of the second and third recommendations contained in the Third Report of the sub-committee on Agenda and Procedure, which was agreed to on Tuesday, November 27, be rescinded.

After discussion, and the question having been put on the said motion, it was negatived on the following division:

*Yeas:* The Honourable Senators Aseltine and Horner; Mrs. Fairclough, Messrs. Fleming, Fulton, Harkness, Hees, Murray (*Oxford*), Thatcher.

*Nays:* The Honourable Senators Beaubien, Burchill, Fogo, Golding; Messrs. Beaudry, Boucher, Carter, Cauchon, Croll, Garson, Harrison, Jutras, MacInnis, Mott, McLean (*Huron-Perth*), Roberge, Shaw, Stuart (*Charlotte*), Welbourn.

Mr. Preston and Professor Fuller were recalled and questioned.

Mr. Gould was called and questioned.

Mr. Croll gave notice of the following motion, which was referred to the sub-committee on Agenda and Procedure for consideration:

Be it resolved:

1. That no dealer shall sell or offer for sale directly or indirectly any commodity at a price less than 5% above cost.

2. That this provision shall not apply to the following sales:
  - (a) of goods damaged or of goods which form the balance of a line which has been discontinued or is out of season
  - (b) of sales for charitable purposes or relief agencies
  - (c) of perishable merchandise which must be sold promptly in order to forestall deterioration and consequent loss
  - (d) of merchandise sold in bona fide clearance sales if advertised, marked and sold as such
  - (e) of merchandise sold upon the final liquidation of any business and is advertised, marked and sold as such
  - (f) under the Bankruptcy or Winding-Up Act or by judicial order.
3. "Cost" means invoice cost to bona fide dealer or replacement cost, whichever is lower, less cash or quantity discounts, plus excise duties and sales taxes, if any.
4. "Directly or indirectly" is intended to include trade practices by way of evasion of the Act such as
  - (a) combination sales of commodities
  - (b) inflated trade-in allowances
  - (c) concealed price reductions in premiums and discounts and other sales practices, such as "loss leaders".

5. That it be made an offence, and dealt with under the Summary Convictions Section of the Code.

The witnesses retired.

At one o'clock p.m. the Committee adjourned until Friday November 30, at 10.30 o'clock a.m.

A. L. BURGESS  
*Clerk of the Committee*



## EVIDENCE

NOVEMBER 29, 1951

10.30 a.m.

The CHAIRMAN: Please come to order, gentlemen. We are having the Canadian Pharmaceutical Association back this morning, but before calling Mr. Preston and his associates, in fairness I should read a letter I received from them, dated November 28, addressed to the clerk, Mr. Burgess:

"At our meeting last Thursday I was requested to produce a statement of mark-ups by retail pharmacists on drug store articles on which there are no maintained resale prices.

This will be impossible to supply in any reasonable period since prices on these articles vary with individual pharmacists as well as in different areas, i.e., there is by definition, no uniform price.

The only manner this information could be approximated is by a questionnaire addressed to all druggists or to representative druggists in every locality and then averaging the returns.

If the parliamentary committee would care to formulate such a questionnaire, the association will be pleased to circulate it and make every effort to obtain the information requested at the earliest possible date. However, it would undoubtedly require a considerable time to complete the task."

A second thing is that during the questioning of Mr. Preston the last time he was here Mr. Shaw requested a copy of the letter which has been sent out by the Canadian Pharmaceutical Association to their members.

Mr. FULTON: Should that not be tabled?

The CHAIRMAN: Mr. Shaw has asked for it.

Mr. SHAW: I think it should be made available to all the members of the committee.

The CHAIRMAN: It will be printed as an appendix to these proceedings.

Mr. Preston, will you come to the chair?

Mr. FULTON: Before Mr. Preston is called I want to raise a point of order concerning the large number of telegrams which have been received, and we are advised they run into thousands. Just exactly how do you propose to deal with them?

The CHAIRMAN: I do not know about those; I reviewed my own file this morning and I think I counted perhaps fifty wires and letters. That is one point I was going to discuss with the steering committee. They have simply been acknowledged, saying they will be made available to the committee.

Mr. FULTON: What about those received by Mr. Burgess? I have heard suggested that the figure runs into thousands.

The CLERK OF THE COMMITTEE: I received no wires, but I received a number of postcards.

The CHAIRMAN: I may say that among the wires I acknowledged some were addressed to Mr. Burgess which he had turned over to me. The wires seem to come in stages. After receiving the wire from Eaton's a lot of wires came in from retailers and some retail groups who were strongly behind the stand the Canadian Retail Federation took for them. In any case all these letters, and

copies of the letters I sent in reply in which I acknowledged receipt of their communications, will be made available.

Mr. FULTON: I suggest we print one copy of the postcards if they are officially addressed to the chairman.

The CHAIRMAN: Most of the postcards I received are addressed to James Sinclair, M.P., Capilano. I think most of the members are receiving them. Most of them are from the Quebec area.

The CLERK OF THE COMMITTEE: There is a printed one addressed to the joint chairmen and I think about 100 have been received so far.

The CHAIRMAN: I certainly do not intend to acknowledge those, but whether the clerk of the committee should acknowledge receipt of them or not is another matter.

Mr. FLEMING: Are they all in the same form?

The CHAIRMAN: Yes.

Mr. FLEMING: Can you tell us the contents?

The CHAIRMAN: Just that they protest against legislation which would outlaw resale price maintenance.

The other thing to come before the committee this afternoon and tomorrow is the disposition of the briefs. Some of the people who submitted briefs are willing to have their briefs printed and let the matter stand at that and not appear before the committee. That is not along the lines of our original decisions where we would call before us people whose briefs had been submitted and on whose briefs we wanted further information.

Mr. SHAW: Are you finished with that?

The CHAIRMAN: Yes.

Mr. SHAW: What is the position with respect to national organizations representing manufacturers where apparently the national organization is not in a position to speak for individual manufacturers. Is it the intention of this committee to deal with manufacturers as such? The difficulty we are encountering here is a representative of a national body who may not be a manufacturer himself and it puts us in the unfortunate position where we are not able to question the manufacturer himself.

The CHAIRMAN: The line of inquiry we are now taking is that the people who speak for the manufacturers are people chosen by the manufacturers.

Mr. SHAW: Are we able to take individual manufacturers concerned and ask them questions?

The CHAIRMAN: If we wish to subpoena them, but as far as that is concerned no decision was taken by the steering committee or this committee as to whether we intend on our behalf to summon before us individual firms.

Mr. SHAW: It may be a matter for the steering committee.

Mr. THATCHER: I understood the steering committee had decided to call specific companies.

The CHAIRMAN: There was no decision, the only decision was on this matter of the briefs which as they came in were to be filed in one of three categories: briefs from national organizations on which members might require further elaboration and might like the representatives behind them to come before us; secondly, briefs would be circulated, and which would be printed in our record without having the organization representatives come before us, and, thirdly, I must say so far as we have received none of the briefs which we had in mind, that is, briefs merely filed. So far the members of the committee have received every brief we have received.

Mr. THATCHER: If we are going to call in specific companies we should give them notice so they can prepare their briefs. I, for one, feel very strongly we should bring in representative companies that can give us facts and figures. But you cannot call them on the spur of the moment. Therefore may I suggest to you that the steering committee should make a decision on the point one way or the other.

The CHAIRMAN: I think we are back to the key point of this inquiry for the fourth time. Once again I will turn back to our decision of Tuesday, November 27, on clauses 2 and 3, that questioning of witnesses in future be confined to arguments advanced in their briefs. After a long discussion on that day and on the previous day we decided the purpose of the committee was primarily to hear representations of those who opposed the legislation the government had announced in the Speech from the Throne. If the Canadian Manufacturers' Association or those manufacturing associations we are having before us do not choose to bring before us individual manufacturers to substantiate their case, I think the decision of the committee has been that we would rest with the representations made by those chosen to appear.

Mr. FULTON: You say the committee changed their decision four times already, so there is no reason why they should not change it again.

Mr. THATCHER: Are you saying now that we are not going to call these companies?

The CHAIRMAN: I am saying that the committee on Tuesday, the 27th of November, said that questioning of witnesses would be confined to the arguments advanced in their briefs.

Mr. THATCHER: What has that to do with calling the companies?

The CHAIRMAN: Because the companies have submitted no briefs.

Mr. FULTON: Nobody has asked them to.

The CHAIRMAN: You are quite aware of the two approaches this committee had open to it, either an all-out investigation into all companies with all sorts of facts and figures, and the second approach, an approach that could achieve in the foreseeable future some decision in the matter. There are those who regard this committee as affording an opportunity for those who are opposed to the prohibition of resale price maintenance—who made representations to the government after the Speech from the Throne to the effect that they were opposed to the proposed legislation—to make further representations to a parliamentary committee in order to make known their position.

Mr. THATCHER: Very respectfully, Mr. Chairman—you told me, both personally and at the steering committee, that we would have the opportunity, after the association briefs were through, to bring in individual manufacturers to give us more specific information. What has made you change your mind?

The CHAIRMAN: It is not a question of changing my mind, Mr. Thatcher. The whole committee is aware of the rather uncertain ground on which we started here. It was only when we got into the actual facts and the fantastic amount of figures that we would have to have—we have only to look at this letter this morning to find out how hard it is going to be to obtain, even in a restricted field like the retail drug store business—the difficulty of obtaining such figures and the questionable value of those figures when obtained, since they vary from drug store to drug store and from area to area. It was after that that the committee did decide on this point, and if after every time we meet we have to go over all this thing again we will be here a long while—a long while after you have gone home, Mr. Thatcher.



Mr. FULTON: Mr. Chairman, I would like to point out that on Tuesday, November 27, the committee reversed a decision it had taken on Monday, the 26th, and again on Friday, November 23, it reversed a decision it had taken the previous day, and each time that that reversal took place it was as a result of representations in a line of discussion initiated by yourself as chairman. It is indisputable that the committee arrived at a decision that we would direct specific questions to a number of manufacturers and retailers and get the full story of what the facts and figures were, and that twice, at your direction, or as a result of a line of reasoning initiated by you, supported by the Minister of Justice and the government majority on the committee, you had the committee change its decision. Now, if you see fit on two occasions to take time and have the committee take the time to discuss the whole matter again and reverse its previous decisions, I see no reason why Mr. Thatcher and others who feel the same way should not have the right to raise this matter again in the hope that the committee will see that we are not going to be able to reach a sensible conclusion based on all the factors in this matter unless we have an opportunity to discuss all the various factors along with them, all the facts and figures, so that we can see whether a consumer is prejudiced with respect to this price maintenance or whether he is benefited with respect to this price maintenance. That is the issue before the committee.

Mr. MACINNIS: I thought the first decision we took was that while national organizations appear before the committee, that local organizations would not be heard unless they are opposed to the views of the national organizations.

The CHAIRMAN: That is quite correct.

Mr. MACINNIS: Now, no doubt we have changed our procedure here on one or two occasions—

Mr. FULTON: Four separate occasions.

Mr. MACINNIS: —but that is no reason why we should go on discussing the procedure. Surely we must come to sometime when it is the last time we are going to make a change, and I think that time has arrived. The decision that we made last Tuesday on that should stand, and particularly should stand in view of that letter which you have read this morning. I took the position during the discussions on this that it would be quite impossible to get information such as required on non price maintained articles, and that letter now substantiates that, that if we were to try to get that information it would keep us here God knows how long. I do not know whether that is parliamentary or not, but it is the best term I can find at the moment.

Surely in the face of all that we should now decide whether we have the material before us—all the material we can get and all the material we can usefully use in coming to a decision. We should leave it at that. I suggest you put the question now to the committee as to whether this discussion should close and that we get on with the business.

Mr. BEAUDRY: Before the question is put—

The CHAIRMAN: I want to point out one thing about Mr. Fulton's observations. The principal change occurred at the meeting of the steering committee on Wednesday, to which the committee had referred the problem when we heard from the present Combines commissioner—

Mr. FULTON: That was Monday.

The CHAIRMAN: Monday—on the problem first of all of getting figures and, secondly, the value of the figures when obtained—as we heard from the previous Combines commissioner yesterday.

It was in view of that discussion with the steering committee, which after all is not an unwieldy meeting of 36 members such as this, by a vote of 7 to 2 with the chairman not voting, it was decided that this was the line of procedure which would enable us to proceed most advantageously with our work.

Mr. BEAUDRY: Does that imply that we cannot call, as I suggested I would like to call, some of the provincial dairy boards who practice resale price maintenance and have them show the reasons why they are practising—

The CHAIRMAN: None of the provincial dairy boards have filed briefs, Mr. Beaudry. None of the dairy boards have asked the government for a further review to be made of the proposed legislation.

Mr. BEAUDRY: And from that it follows we may not have them as witnesses? I would point out to you that at the very first meeting of this committee, as reported on page 24, I brought up the point and you made the following observations:

The CHAIRMAN: We are speaking about things with respect to which we have not got definite knowledge. But if you feel that there is a wish, when we come to call witnesses, it might be proper to call the newspaper publishers.

The CHAIRMAN: "If there is a wish". Well, the steering committee on November 26, and later this committee on November 27, in view of the discussions and the line of investigation we had followed since the opening made the decision. I think, unless we are going to thresh this thing all over again, I should adopt the suggestion of Mr. MacInnis—that is to put it to a vote again as to whether we stand by this or whether we should re-open it. That would be a practical way of getting ahead with the business without stalling. Would you like to so move, Mr. MacInnis?

Mr. MACINNIS: You said "the 26th"?

The CHAIRMAN: The 27th.

Mr. BEAUDRY: Would you please re-read—

Mr. FULTON: The decision was to apply the gag.

The CHAIRMAN: The decision was that all questioning of witnesses would in future be confined to the arguments contained in their briefs. The decision in principle—

Mr. BEAUDRY: Does that exclude other witnesses? I contend that it does not.

The CHAIRMAN: The decision in principle was that this committee was not a full-dress inquiry to cover again the whole field of the MacQuarrie Commission and all other relevant things. The purpose of this committee was to afford those who were opposed to the government's intention to introduce legislation an opportunity to give this committee reasons why that legislation should not be adopted.

Mr. BEAUDRY: I suggest that is limited to questions that can be asked of people who have submitted briefs. You have interpreted it to apply to those who have not submitted briefs.

The CHAIRMAN: If they have not submitted briefs they certainly cannot be questioned.

Mr. BEAUDRY: I do think it applies to definite briefs submitted but I do not think it can be applied to those who have not submitted briefs.

Mr. FULTON: There is a great inconsistency in your argument. Mr. McGregor did not submit a brief; Mr. McGregor was asked by this committee—and I think very properly—to come before us. As a matter of fact, when he came before us he did not even have a brief, but the committee heard Mr. McGregor although we did not have that brief. Why should that be confined to Mr. McGregor? I admit that Mr. McGregor is one of the most highly qualified men to speak on the subject, but there are others whose practices are of the greatest importance on the subject.

You are utterly inconsistent when you approve the course of calling Mr. McGregor—although he did not submit any brief or indicate that he wanted to submit any brief—and then bring down the hatchet and say that you cannot call other witnesses because they have not submitted briefs.

Hon. Mr. BEAUBIEN (*Joint Chairman*): Mr. McGregor did submit a brief and it was presented to everybody.

Mr. FULTON: But we called Mr. McGregor before that. He had not submitted a brief on which we were to question him. We asked Mr. McGregor to come before this committee and all Mr. Beaudry and Mr. Thatcher are suggesting is that they be allowed the same privilege with respect to their witnesses.

Mr. CROLL: Mr. Chairman, it was not his privilege. The privilege with respect to Mr. McGregor was one which we were asking for. He was not asking us at all.

Mr. FULTON: May we not ask others then to come?

Mr. CROLL: We decided at that meeting of the 27th—and we discussed it at an earlier meeting of the agenda committee—that we would hear certain witnesses in order to bring in recommendations at this session, and we decided that we would limit discussion to the matter in the briefs. There was no attempt made to gag or to apply the hatchet.

Mr. FULTON: Then I do not know what is going on here.

Mr. CROLL: That is very obvious. It is a deliberate attempt to delay this committee. I think it is very obvious, and I think it is about time it was said.

Mr. FULTON: On two separate occasions this committee came to a decision.

The CHAIRMAN: Mr. Croll has the floor.

Mr. FULTON: There is no attempt to delay.

The CHAIRMAN: Order, order!

Mr. CROLL: I think, Mr. Chairman, that we have been very patient with people who from time to time have attempted to delay this matter before the committee, and we have waited and waited for them, perhaps, to exhaust themselves or to exhaust their tactics.

Mr. FULTON: You have not been brief, Mr. Croll.

Mr. CROLL: I have questioned at the most for only 10 or 15 minutes, and they were very pertinent questions. It is true that I have done a little nagging of my friend Mr. Fulton, at times, but that was on the side. And I now think that the time has come, in view of the constant discussion such as we had at the last meeting when we spent a great deal of time, as well as at every meeting. You will have the very same thing occur taking up hours of time discussing matters of no consequence, and matters as to which a decision has already been reached. I think it is time, Mr. Chairman, that you made a decision and brought at end to this sort of delaying tactics.

Mr. FULTON: Let the committee make its decisions, instead of having them dictated.

The CHAIRMAN: I see Mr. Hees, Mr. Shaw, Mr. Beaudry, Mr. Thatcher and Mr. Fleming. And it will soon be a quarter to one.

Mr. SHAW: Having opened this matter I think I should be allowed to give a reason. It is not that I am anxious to delay, Mr. Chairman.

Mr. CROLL: No, not you, Mr. Shaw.

Mr. SHAW: But I have not been able to establish yet from any of the national organizations that there does exist a contract as between the manufacturer and the retailer. But I think I can prove that there is, at least in one case, and the only way I can do so is to bring the individual manufacturer before this committee. That was my reason for bringing up this subject.



The CHAIRMAN: Mr. MacInnis?

Mr. HEES: Mr. Chairman, I am a little amazed, just as Mr. Fulton is, at the changing which has been done with respect to these matters. We had a meeting on Friday and one on Monday. First of all, we had the retail merchants here, and it was decided by the committee that we would get the facts and figures. I would like to quote very briefly what the Minister of Justice said.

Mr. CROLL: Mr. Chairman, on a point of order: we discussed this very problem yesterday for an hour. Now we are getting this reiteration. I think these are delaying tactics and I think that Mr. Hees is out of order.

Mr. HEES: I am only half way through.

Mr. FULTON: Mr. Chairman, on my point of order, I would point out that the initial delay was caused when the committee, at your suggestion, on Tuesday took an hour and a half to reverse a decision that had been reached previously.

The CHAIRMAN: Now, Mr. MacInnis.

Mr. MACINNIS: Will you allow me to praise a point of order?

The CHAIRMAN: A point of order.

Mr. MACINNIS: My point of order is that all this discussion is out of order unless there is a motion made to rescind what happened here last Tuesday.

Mr. BOUCHER: I suggest that Mr. MacInnis' motion be put to a vote.

The CHAIRMAN: Mr. MacInnis has very properly pointed out that in view of the decision taken at our previous meeting this present discussion is out of order.

Mr. THATCHER: I move the decision of last Tuesday be rescinded.

The CHAIRMAN: In view of the fact we have had a discussion on this point at least three times in committee and once in the steering committee, I am going to put this question to a vote immediately.

Mr. FLEMING: Just a minute.

Mr. THATCHER: I have not spoken on my motion.

The CHAIRMAN: This is exactly the point that has been raised so often at every possible opportunity on points of order, and certain members here are trying to protract the discussion. No point will be raised today that was not raised here on Monday or Tuesday or at the steering committee's meeting, or in Mr. McGregor's evidence yesterday afternoon. Is it the wish of the committee I should put the motion without discussion because this thing has been discussed ad nauseum.

Mr. FLEMING: I have not said a word on this.

The CHAIRMAN: In view of the fact this procedural point has been discussed at least three times I am going to put the motion.

Mr. FLEMING: But this is a motion to re-open it. I am asking if I may say a very brief word on it.

Hon. Mr. ASELTINE: If the whole question has been decided we may as well proceed.

Mr. HEES: If you are going to steam roller it—

Mr. FLEMING: I would like to say a brief word about this.

The CHAIRMAN: If Mr. Fleming will make it brief we will hear him.

Mr. FLEMING: There is one point on this question which it seems to me was not discussed the other day, and it is a very important point. The Minister of Justice said, after I spoke the other morning, that this committee was a forum to provide an opportunity for a hearing for those opposing legislation to prohibit resale price maintenance.

Hon. Mr. GARSON: For those who had made representations before the MacQuarrie Committee.

Mr. FLEMING: Those opposing legislation to ban resale price maintenance. I would point out that this is not the way the committee has gone about its task. It has gone out and asked organizations who were thought to represent consumers to come before us and give their views. We asked both the senior labour organizations to come here and they did not come within the category described by the Minister of Justice in his remarks the other day. We started out with a view to getting information on all sides of the question.

Mr. THATCHER: Not opinions.

Mr. FLEMING: And we sought the assistance of the commissioner of combines and we went out yesterday and sought the assistance of the former commissioner of combines and we have not at all followed the line of procedure the Minister of Justice said the other day this committee was set up to follow. It strikes me as an extraordinary thing at this stage that we are going to change completely our tack now and say the purpose of setting up the committee was not to get all the information, was not to hear all the views on it, but just to bring into the dock here those who were opposing the kind of legislation the government indicated in the Speech from the Throne. Is that not an offence against our elementary conceptions of justice and fair play?

The CHAIRMAN: Mr. Thatcher's motion is to rescind the decision made on November 27, and if that carries we have no procedure and then anybody can argue in any way he wants. If Mr. Thatcher's motion carries then you can make your observations again for the fourth time.

Mr. FLEMING: Yesterday Mr. Hees raised the question of calling Mr. Justice MacQuarrie and it was referred to the steering committee. If it is clearly understood that is the sort of thing the steering committee has power to deal with, if the steering committee has power to deal with calling witnesses—

The CHAIRMAN: Once again I say that when Mr. Thatcher's motion is either adopted or defeated we can proceed.

Mr. FLEMING: May I ask if Mr. Thatcher's motion is defeated if this committee has power to invite Mr. Justice MacQuarrie to come before us, or the T. Eaton Company representatives to come before us?

The CHAIRMAN: The steering committee will decide that in view of the motion of November 27, if that is still the desire of the committee. Whether or not it is the desire of the committee will be shown on the vote we are now going to take.

Mr. FLEMING: You are the chairman, you are going to be making a ruling on this.

Mr. CROLL: It may not arise.

Mr. FLEMING: I am asking you if Mr. Thatcher's motion is defeated if the committee retains the power to call Mr. Justice MacQuarrie?

The CHAIRMAN: Just a moment, there was no motion to call Mr. Justice MacQuarrie. Mr. Hees asked whether or not Mr. Justice MacQuarrie could be called and I referred that to the steering committee, once again for the reason that nine men can come to a decision better than thirty-eight, particularly when some of them are very anxious to thresh old straw. Now, if the motion is carried it will open up the whole problem for the fourth time. If it is adopted we are going to regard this committee as giving an opportunity for those who feel this legislation should not be proceeded with to come before us. That is the line of inquiry that will be followed. I am now putting the question. I suppose you want a recorded vote, Mr. Thatcher?

Mr. THATCHER: Yes.

Recorded vote: Motion lost.

Mr. FULTON: It is necessary for me to leave, and may I say for the record I am not walking out on the committee.

Mr. BEAUDRY: The committee has just voted not to rescind the resolution or decision of the steering committee supported by this committee that the questioning of witnesses be limited to the material supplied by them in their briefs?

The CHAIRMAN: That is right.

Mr. BEAUDRY: This vote, in my opinion, must not be considered as restricting the ability of this committee to call witnesses who have not submitted a brief. That is based on two or three precedents including one yesterday. That is why I voted no to this motion, and I would like to know from the chair whether I should have expressed a desire to bring in dairy control boards so we will have an opportunity to hear them.

The CHAIRMAN: That will be a decision of the steering committee when our agenda will be decided—subject of course, to confirmation here.

Mr. BEAUDRY: At page 249 of the record I suggested to the committee counsel that we secure some information from government departments, including the Dominion Bureau of Statistics, the Department of Justice and the Department of National Revenue—could we know now what progress has been made in that respect?

Mr. CROLL: Does my friend ask that income tax returns be tabled here?

Mr. BEAUDRY: I am quoting from memory; it is at page 249.

Mr. CROLL: I am looking at it. At page 249 Mr. Beaudry makes this statement:

If it were possible for counsel to secure these figures, either from the Bureau of Statistics or from the Income Tax Department or from other sources, it would be of great benefit to the committee.

It is a proper observation, that is all.

Mr. BEAUDRY: No observation was made by anybody in this committee suggesting this was out of order. I suggested the figures, and I think this would accelerate the proceedings considerably.

The CHAIRMAN: I see no specific request nor was there any given to this committee. You made the observation in your speech that you thought it would be helpful.

Mr. BEAUDRY: When I make an observation I qualify it as an observation. This was not exactly a qualified observation.

The CHAIRMAN: If the committee will come to order we will have Mr. Preston and his associates. Mr. Preston would first like to make certain clarifications on the evidence which he gave the last time he was before the committee, and then we will resume questioning where we left off.

**J. W. Preston, Secretary-Manager, Canadian Pharmaceutical Association, recalled:**

The WITNESS: Mr. Chairman and gentlemen of the committee, last Thursday when I was here Mr. Dickey asked a question, to be found on page 155 of the evidence. The reason I asked the privilege of making this statement is that I thought possibly there was some confusion in the minds of the members and I thought this would clarify it. Mr. Dickey asked the question:

Q. Now, do you believe that if that were not the situation there would be any pressure on the manufacturer by the retailer, not only



to change his percentage of mark-up which you are allowed, but to try to reduce his price to you? That is, would the retailer say that you could still get a living wage out of it and still sell the product at a lower price to the ultimate consumer?

That is "retailer" and I think that is a typographical error; I think it means "wholesaler." The manufacturer's price is subject to competition and if he can profitably decrease the price he will do so.

Mr. CROLL: That is not the answer in the record. I understand you are correcting it.

The CHAIRMAN: You are amplifying the answer given at that time in the light of reading the record?

The WITNESS: Yes.

The CHAIRMAN: That is at page 155 in the centre of the page.

Mr. CROLL: I think when that is done the original answer should be read.

The CHAIRMAN: Read the original answer and then say what amplification you want made. This is in the middle of page 155.

The WITNESS:

Q. Now, do you believe that if that were not the situation there would be any pressure on the manufacturer by the retailer, not only to change his percentage of mark-up which you are allowed, but to try to reduce his price to you. That is, would the retailer say that you could still get a living wage out of it and still sell the product at a lower price to the ultimate consumer?—A. I cannot answer for the manufacturer. The manufacturer gets his price first.

The CHAIRMAN: I think we all agree with Mr. Preston that the word "retailer" in Mr. Dickey's question should obviously be "manufacturer".

The WITNESS: On page 163 the Hon. Mr. Garson asked this question:

Q. It is just to clear up this question that I raised it, in fairness to the witness and to the rest of us. I was quite clear, and you repeated it once or twice in reply to Mr. Thatcher, when you said that prices would rise, and therefore in the interests of the consumer, resale price maintenance should be retained. Secondly, I think you said they would all become loss-leaders. Now, you say that your second answer is the correct one?—A. Yes, I think so. I am sorry if I erred because probably what I was trying to say was yes or no to the question which was put to me and sometimes it is not quite clear. But what I certainly meant to say was that if you should illegalize price maintenance, prices on those items would certainly drop.

I certainly meant to say that in some lines prices would be less. These reductions would be at the cost of (1) increasing prices on other products to compensate, (2) diversion of retail business to larger operators and the extinction of many small businesses. To this extent monopolistic tendencies would put prices higher in the long run.

Hon. Mr. GARSON: That is not a correction of the answer, that is an addition to it.

The CHAIRMAN: Mr. Preston, we have experienced very often ourselves errors made in *Hansard* because of the difficulties the reporters are under, but normally we think of a clarification not being, as Mr. Garson has pointed out, an amplification of the answer after having seen the record. I take it that is what you are doing—enlarging on your answer.

The WITNESS: Yes.

The CHAIRMAN: Now, I take it we are adhering to the ten-minute rule. Mr. Fleming, will you proceed?

*By Mr. Fleming:*

Q. Just to show you I am trying to keep within the ruling that we confine ourselves to the briefs as a source of questions, I wish to refer to a couple of pages in your brief, and I am using the paging in your brief rather than the printed *Hansard*. My first point has to do with competition. On page 3 of the first appendix to your main brief you say—

The CHAIRMAN: Will you go a little slower with that?

Mr. FLEMING: It is on page 22.

Hon. Mr. GARSON: Would it not facilitate matters for all of us if my hon. friend referred to the report of the proceedings in which the brief was set out?

Mr. FLEMING: My reference is to the brief because I think that is what the witness is more familiar with, and I think it will facilitate matters if I refer to that.

*By Mr. Fleming:*

Q. On page 22 you have dealt with a number of articles that are handled under resale price maintenance and in the footnote you speak about a number of selected brands. The last day you dealt with the question of enlargement of outlets for pharmaceutical products during this period when resale price maintenance has been in force. What have you to say about the other aspect of competition, namely, the enlargement, if it is so, of the number of articles in competition with one another which are branded and subject to resale price maintenance; in other words, a competition between products of different manufacturers in the same class of goods?—A. We show that somewhere in the brief, Mr. Fleming. We show the number of different kinds of tooth paste, for instance, that are in competitions with others.

Q. You mention that in the footnote on page 22 to some extent, but I wonder if you have anything to add to that on the general subject of what this has done to competition.—A. Do you mean in the way of eliminating competition?

Q. I am asking about the effects of resale price maintenance as applied to the number of articles coming on the market which compete with one another. For instance, the number of competing brands of tooth brushes, the number of competing brands of tooth paste, and so on down the line.—A. I do not think it has any effect. There are increasing numbers of different brands of tooth paste coming on the market all the time.

Q. Would you say, then, that it has not had any effect, that it has not had any effect in reducing or extending competition?—A. I do not think it has had any effect either way.

Q. I would like to take up next the question of what effect the practice has had on prices. At page 39 of the same appendix to your brief, you say that the rise in prices from 1939 to 1947 on drugs and toiletries sold under fair trade contracts stands at an average of only 3·12 per cent, and I see the same statement repeated in Professor Fuller's commentary, which is exhibit 3. He deals with it at various pages, but I think in particular at page 22. Perhaps I should direct this question to Professor Fuller: are there any more recent figures available, Professor Fuller, on this subject of the percentage of price increase on these branded articles?

Mr. FULLER: I think that there is a more recent one within the last year. A brief mention is made of those on some other page of the brief. That was made by the Bureau of Education on Fair Trade and the Eli Lilly Company, of Indianapolis.

Mr. FLEMING: Well, on page 32 of your printed article, Professor Fuller, you say in the middle of the page:

While the cost-of-living index has skyrocketed, prices of fair trade merchandise have been sticky, thus reducing net profits in the retail drug field.

Is that intended to be a statement based on the most recent information available?

Mr. FULLER: Yes, the operating costs of pharmacies all over the country are going up, wages are going up, and such like, but resale price maintained goods are not going up in price. Therefore, the margin between costs and profit is becoming less.

Mr. FLEMING: We had from Mr. McGregor yesterday a statement which I interpreted as meaning that while the margin of profit on individual articles under resale price maintenance might not be going up under the present practice, nevertheless in view of the greater volume handled by the retail outlets their gross profits were going up. Have you any comment on that, Professor Fuller?

Mr. FULLER: I think the Eli Lilly survey, which was made by the Eli Lilly Company on a voluntary basis in the United States in 1949, showed that the gross profits—I have to figure this out for a moment—in 1949 were 32.4 and in 1950, if I calculated correctly, they were 32.8, a difference of .4 of 1 per cent.

Mr. FLEMING: I take it, Professor Fuller, in preparing your very interesting commentary on the MacQuarrie report you have gone to as many sources as are available for information as to the practice and its effects in Canada.

Mr. FULLER: I would like to qualify that in this way. On November 25 I was asked to prepare a critique of the MacQuarrie report, which I did, I believe, in seven or eight days.

Mr. FLEMING: I guess you mean October 25?

Mr. FULLER: Yes, October 25. It was after I had prepared that critique that this parliamentary committee was appointed and I was asked to prepare a second critique of a more positive nature, and that is the reason why some of the material is contained in one and contained in the other. Now, I think a great many more sources can be obtained if we spent more than seven days. I think that is one of the first items I have in my critique on page 6.

Mr. FLEMING: Are those sources available now?

Mr. FULLER: They are available in libraries, yes; the libraries are filled with dozens of titles, and articles in the journals of, say, the American Economic Association and so forth, but what is available in Canada I do not know.

Mr. FLEMING: That is the point I am getting at. Are there any Canadian sources of information available at the present time that you had regard to or that may be available to us now that have not yet been used?

Mr. FULLER: I doubt very much whether any purely Canadian material exists. I think we could get figures on comparing movement of prices of non-price maintained goods with the movement of prices of price maintained goods from the Dominion Bureau of Statistics inasmuch as they have a long list they continually kept throughout the years in order to make up their price index. It is available on that basis and I think it will clearly show that the goods under resale price maintenance have not gone up anything like the goods that are sold on what is called the free market.



Mr. FLEMING: We talked about the reduction of retail profits in the drug field on these branded article. What would you say in enlargement on that subject in reference to margins of mark-up?

Mr. FULLER: You mean that as the margins go up they might get a larger net profit?

Mr. FLEMING: Yes, I am trying to compare that question of mark-up with volume in relation to total profit.

Mr. FULLER: I know of no figures based on price maintained goods. I think we all agree that profit is made up of three elements: margin, volume, and turn-over, and each retailer or wholesaler or manufacturer has to find the balance between those three factors in his own particular business. There is no magic point that can be set down on that.

Mr. CROLL: Mr. Chairman, I wonder if Mr. Fuller said that there was not any way of ascertaining the difference in margin between the price maintained goods and the non-price maintained goods.

Mr. FULLER: No, I did not say that.

Mr. CROLL: What did you say? Would you mind repeating?

Mr. FULLER: I do not know whether I can recall exactly what I did say. I do not know if we have any figures which will compare, let us say for any particular store, the amount of net profit that he gets in relationship to the margin on price maintained goods over and beside non-price maintained goods. I do not think any store keeps those figures.

The CHAIRMAN: This will be your last question, Mr. Fleming.

Mr. FLEMING: Will you sum it up with your comment on the effect of these various factors so far as resale price maintenance is concerned, in your experience, that is to say, mark-up, volume, net profit, gross profit.

Mr. FULLER: There has been no major change in the net profit of pharmacies, as far as I am able to find, in the last 20 years, either in gross profit or the percentage of operating expenses or in net profit to any large extent. The movement would perhaps be from a half to one per cent, or even  $1\frac{1}{2}$  per cent. The volume of business in retail drug stores in the United States is moving downward. I do not think it is moving downward in Canada, but there are many reasons for a downward movement as far as both dollar value and tonnage is concerned, inasmuch as resale price maintenance allows a pharmacist to run a more ethical, shall we say, profession, business or establishment. He does not need ice cream or a soda fountain and so on, and he can pass this on to the restaurant owner, and so on. There are a larger number of pharmacists getting rid of goods that are really not essential to pharmacy. With the increase in antibiotics and chloromycetin, there has been a complete change in the nature of the drug business. So all those factors must be brought into consideration when you talk of gross profit and costs, and so on.

The CHAIRMAN: Mr. Carter, your turn.

*By Mr. Carter:*

Q. If I understand Mr. Preston correctly—he was amplifying his answer to Mr. Dickey—I thought he said that if resale price maintenance were abolished prices of price maintained goods would drop for a while but there would be an increase in the price of other products. Is that correct, Mr. Preston?—A. Yes.

Q. Well, how would you account for the increase in the price of other products?—A. Well, in order to reach an over-all average of gross profit.

Q. But would not competition prevent the prices of the other products from increasing?—A. No, because competition would mostly be centered on

the advertised lines, which would be the nationally advertised lines which now enjoy price maintenance.

Q. Then competition would not prevent prices from increasing?—A. Pardon?

Q. Competition would not prevent prices from increasing, is that right?—A. No. There would not be sufficient competition on the non-profit lines. All the competition would be centered on the articles nationally advertised that are now price maintained.

Q. Thank you.

The CHAIRMAN: Mr. Hees, your turn.

*By Mr. Hees:*

Q. Mr. Preston, as a practical business man do you consider that the MacQuarrie report is a factual report basing its conclusions on comparative figures showing the profit margins on price maintained and on non price maintained goods, or do you consider it a purely theoretical report?—A. We think that the MacQuarrie Committee report is an academic exercise, and because of that we do not think that the findings of the MacQuarrie Committee report are substantiated at all from the evidence in the report. We also think that most reports—when I listen to government speakers, they generally finish their speech with a strong sounding note—

Mr. THATCHER: What would you call the McGregor report?

The WITNESS: "There is no evidence, in the report that a scientific study of the effects of resale price maintenance was made either on individual sectors of the economy or the national economy as a whole. There is no statistical data in the report, yet such data does exist. No comparison of the movement of prices of non price maintained goods and price maintained goods, nor their relation to the price index, appears in the report." I am reading from Professor Fuller's commentary on the interim report. And the finish of the MacQuarrie report, in our opinion, is the weakest of all, that is when they failed to deal with the loss-leader which, in our opinion, is the iniquitous part of any legislation that would ban price maintenance.

Mr. HEES: Thank you. Could I ask Professor Fuller what is your opinion on the same question?

Mr. FULLER: I think my opinion is stated very precisely in the brief which Mr. Preston has just read, on page 6, and another part on page 7 which he did not read:

It is our opinion that this methodology is unscientific, and non-factual. The evidence against resale price maintenance is solely that of opinions of interested parties.

That is at the top of page 9.

Mr. CROLL: You said page 6.

Mr. FULLER: Page 6 of the commentary.

Mr. CROLL: What is your statement again?

Mr. FULLER: "The evidence against resale price maintenance is solely that of opinions of interested parties". That is at the top of page 7 of the printed appendix; and at the top of page 9 I said:

The committee is also remiss in its duty in still another way. The terms of reference were: to study in the light of present day conditions, the purposes and methods of the Combines Investigation Act and related Canadian Statutes, and the legislation and procedures of other countries, in so far as the latter appear likely to afford assistance,

and I have gone on to show where they did not tap the material either from Great Britain or the United States. I would also like to come back to page 7, at which I have also stated:

The methodology also includes the habit of lifting lines out of context,

and the next page or so shows how that was done.

Mr. HEES: Thank you, Professor Fuller. What would be the attitude you would adopt towards a student of yours who submitted a report of that kind?

Mr. FULLER: That is a rather embarrassing question. Must I answer it?

Mr. HEES: I would like to hear what you have to say on that.

Mr. CROLL: I think he should answer it. I think it is the sort of question he should answer by all means.

The CHAIRMAN: I was going to point out that a question of this sort is outside the range of the brief you submitted, and in replying you can use your own judgment as to whether you want to answer it or as to how you want to answer it.

Mr. FULLER: I do not know one from the other as far as you gentlemen are concerned. Frankly, on the basis of lack of scholarship and on a scientific basis, I would simply flunk a student who handed that in for credit, that is all.

Mr. HEES: Thank you.

Mr. THATCHER: What about the McGregor report of yesterday?

The CHAIRMAN: Just for the record, Mr. Fuller, would you tell us what kind of students you refer to?

Mr. FULLER: Students in economics.

The CHAIRMAN: Would they be graduate or under-graduate students?

Mr. FULLER: Either.

The CHAIRMAN: At the school of pharmacy at which you are professor, have you graduate students as well as under-graduate students?

Mr. FULLER: At the present time, no. Where I came from, though, we had graduate students.

Mr. CROLL: That means the principal of Queens is flunked on the first chance! Do you know that Mr. Mackintosh, Principal of Queens, is a member of the MacQuarrie Committee?

Mr. FULLER: No.

Mr. CROLL: You do not know who Professor Mackintosh is?

Mr. FULLER: No.

Hon. Mr. GARSON: A very good answer.

Mr. CROLL: And, Mr. Fuller, following your answer to Mr. Hees, I presume Mr. McGregor would flunk, too?

Mr. FULLER: I would like to read the whole brief before I pass judgment there, but generally, there have been just as tremendous changes in economic theories in the last twenty years as there have been in chemistry and the antibiotics. It all depends on when a person takes his economics and where they are going to start from—where they end.

Because of that, I rather belaboured the difficult question of competition but there is nothing which is black or white in either competition or monopoly. They shade into each other. All competition is not good; all competition is not bad; all monopoly is not good; and all monopoly is not bad. When we read Oxenfeldt, which is the basic book from which the MacQuarrie committee quoted, Oxenfeldt is very clear that there are thousands of situations where each individual thing must be taken separately in any investigation.



Mr. CROLL: I think this answer was made by Mr. Preston—he referred to the report as ‘an academic exercise’. You, Mr. Fuller, in answering Mr. Hees, stated that if a student handed that report in to you you would flunk him.

Have you any idea who the people are who submitted this report?  
Do you know Mr. Justice MacQuarrie of Nova Scotia?

Mr. FULLER: Well, sir—

Mr. CROLL: Just answer my question?

Mr. FULLER: No, I do not know any of them—nor do I know their names either.

Mr. CROLL: Well, Mr. Justice MacQuarrie was the chairman; W. A. Mackintosh, the principal of Queen’s University was a member of the board; and G. F. Curtis, who is familiar to you—do you remember the Curtis Report—

Mr. FULLER: None of them whatsoever.

Mr. CROLL: You don’t remember Mr. Curtis?

The CHAIRMAN: I think you have the wrong gentleman, he is the dean of the law school of British Columbia.

Hon. Mr. GARSON: Dean of the Law Faculty of British Columbia—another ‘flunkee’.

Mr. CROLL: And there was Mr. Lamontagne, on the staff of Laval University? You do not know those people?

Mr. FULLER: No.

Hon. Mr. GARSON: They are all flunked then.

The CHAIRMAN: Pretty high class students at Ontario Pharmacy.

Mr. CROLL: High qualifications.

If you will turn to page 6 of this original book, volume, or whatever it is, I think you said to us that what we have heard here is evidence of opinion—and the only evidence that is available, the only data that exists had reference to the first paragraph on page 6?

Let me read what it says, and you quote it:

It was shown from statistically valid research data that in a comparative study of the prices of 26 nationally advertised Fair-traded drug products, the American consumer is found to pay one-tenth of a cent less for these products, taken as a whole . . .

Do you support that statement?

Mr. FULLER: Yes, I do.

Mr. CROLL: Well, then, do you recall any comment made by Mr. Justice Jackson of the United States Supreme Court who was attorney-general during the time this was made—any comment on this particular matter which was then under his department?

Mr. FULLER: It says “in a recent bulletin from the Bureau of Education on fair-trade entitled ‘Current Research Studies on Fair Trade’ it was shown from statistically valid research data that in a comparative study of the prices of 26 nationally advertised fair-traded drug products, the American consumer is found to pay one-tenth of a cent less for those products—”. Is that what you are referring to?

Mr. CROLL: Yes.

Mr. FULLER: That was only made within the last year and Jackson has not been attorney general for several years.

Mr. CROLL: Well, do you remember the comment of the United States Department of Justice on that matter? I will produce it to you?

Mr. FULLER: On this particular matter?

Mr. CROLL: Yes.

Mr. FULLER: This was not made until very recently.

Mr. CROLL: Well, I say their comment made on this recently—on this statement?

Mr. FULLER: I do not know they ever had any comments.

Mr. CROLL: Well, I saw a comment on it and I would be glad to let you see it. They said that in taking these 26 articles out of possibly 3,000 articles it was done for the purpose of propaganda, and it gave no real picture of the situation. That was the view of the United States Department of Justice.

Mr. FULLER: I would be inclined to agree with that statement but that has been used in the opposite way also by the MacQuarrie committee I believe—and the Fortune survey was too. The Fortune survey would come in exactly the same category.

Mr. CROLL: Well, I was not on the MacQuarrie committee so you cannot 'flunk' me for that, but do you agree with the statement?

Mr. FULLER: My point of view is that the number of items studied was too small.

Mr. CROLL: That is exactly what they say?

Mr. FULLER: Oxenfeldt says so too. You cannot come to any conclusion in this particular study—it may have shown—

Mr. CROLL: Very shrewdly, a friend of mine, Mr. MacInnis, say: "Why did you not put that in the brief and say to us: 'This really does not prove anything'."

Mr. FULLER: The pages from which you quote were not compiled by me.

Mr. HEES: A good answer.

Mr. FLEMING: May I ask Mr. Croll to ask the witness what the bureau of education is? Is it a government body or a private body?

Mr. FULLER: As far as I know it is a national organization in the United States made up of various organizations which are interested in resale price maintenance.

Mr. CROLL: Yes.

Mr. FULLER: There are a number of associations, and as far as I know, and I may be wrong and I would not like to give the exact characteristics of it, they include manufacturers, retailers and wholesalers.

Mr. CROLL: My time is running out, although I am sorry about that—

The CHAIRMAN: Three minutes.

Mr. CROLL: Well, they do not drop the flag on you until there is only one minute left, at Varsity Stadium.

Let me say we are having some difficulty in relating American experience, and Canadian experience, American authority and Canadian authority—and you are having trouble too?

Mr. FULLER: Yes, very much.

Mr. CROLL: I quite understand that it is a little difficult. These men on the commission were Mr. Justice MacQuarrie, Mr. Mackintosh, Mr. Curtis and Mr. Lamontagne—and, Professor Fuller, is there any greater authority in this whole of Canada on this question of resale price maintenance than Mr. McGregor?

Mr. FULLER: I would not like to offer a comment on that, sir.

Mr. CROLL: No man with any greater experience that you know of? He has had twenty-three years; he has been there, I think, from the time the branch was formed.

Mr. FULLER: I would not say yes to that question because, as I tried to say a few minutes ago, it depends upon where your thinking starts—and if you start by thinking that all competition is good all monopoly is bad—blacks and whites.

Mr. CROLL: Yes.

Mr. HEES: If he is so good, Mr. Croll, why did he not undertake the inquiry for the government?

The CHAIRMAN: Mr. Hees, no one interrupted you when you had your chance.

Mr. CROLL: I did not take any notice of what Mr. Hees said so it is all right.

Mr. FULLER: Might I add that authorities often disagree on the same subject—medical authorities, and engineering authorities—

Mr. CROLL: Yes, Professor Fuller, but my point is that today if I wanted to know something in connection with pharmacy I would go to the University of Toronto and to Professor Fuller. He is the authority. He may be wrong—that is possible, and he has been wrong today—but at least I would go to him as the authority. Now, who is the ultimate authority on this subject under investigation?

Mr. FULLER: I do not know, sir.

Mr. CROLL: Then, I will say to you: Is it not McGregor?

Mr. THATCHER: Or MacDonald?

Mr. HEES: It is supposed to be MacDonald today, he holds the position.

Mr. CROLL: Now stop this, I am asking the questions!

Mr. FULLER: I have answered the question; I do not know.

The CHAIRMAN: Mr. Garson?

Hon. Mr. GARSON: Professor Fuller, Mr. McGregor made this statement yesterday. I shall read it to you. I also read your critique of the MacQuarrie report very carefully and I rather came to the conclusion, from the long statement you made, that you agree with the statement made by Mr. McGregor which I am going to read. Instead of going all through your material I would just like to put Mr. McGregor's statement to you and ask you whether you agree. If it is necessary we will go back to other material but that would be rather lengthy.

This is what he says:

The CHAIRMAN: Page?

Hon. Mr. GARSON: Page 6.

Mr. THATCHER: Can we all question Mr. Fuller on Mr. McGregor's report?

Mr. FLEMING: This raises an interesting point about the decision that was upheld.

Hon. Mr. GARSON: The point is well taken and I will question Professor Fuller on his own brief.

The CHAIRMAN: Yes, the point is well taken; thank you, Mr. Thatcher.

Mr. FLEMING: The first offender is the Minister of Justice.

Hon. Mr. GARSON: In your brief, Professor Fuller, you say, in listing certain evidence, that resale price maintenance has kept prices from going up, this:

We do not maintain that this additional evidence which we are presenting, is more valid than that used by Oxenfeldt and the committee.

We do claim that it is equally valid.

Mr. FULLER: Yes.



Hon. Mr. GARSON: I suppose that since you are representing a responsible body that you would not present any evidence to this committee unless you thought it was valid?

Mr. FULLER: That is correct.

Hon. Mr. GARSON: Yes.

Mr. FULLER: I mean any material is always subject to the method by which it was obtained and the interested parties who sponsored it.

Hon. Mr. GARSON: Quite so, but your statement was that you were presenting material to this committee which, I presume, you would regard as valid. You were saying the Oxenfeldt comparisons were equally valid with your own.

Mr. FULLER: Right.

Hon. Mr. GARSON: One of the things he said was this—and I am quoting from your brief—"several methods may be used to obtain suggestive evidence about the influence of resale price maintenance legislation on resale prices."

Mr. FLEMING: What page?

Hon. Mr. GARSON: Page 221, and going over to page 222. "First," he says, "comparisons may be made between prices in states where resale price maintenance is legal with states where it is not."

Now, Professor, would you confirm for me what seems obvious that this comparison is only valid in the United States, because in Canada resale price maintenance is of fairly general application in all provinces?

Mr. FULLER: I am not a legal mind and I do not know how to interpret that. It merely states where it is legal and where it is not. In Canada, there is not either permissive or restrictive legislation at the present time that I know of.

Hon. Mr. GARSON: Therefore comparisons of that type cannot be made in Canada, and they must be made in the United States?

Mr. FULLER: Yes, I think so.

Hon. Mr. GARSON: "Second," and I am quoting your quotation of Oxenfeldt: ". . . the changes in prices of products under resale price maintenance can be compared with the changes in prices of products not priced under resale price maintenance."

Oxenfeldt says, and you quote him in italics, "These comparisons are risky".

Mr. FULLER: Yes, he has it right here.

Hon. Mr. GARSON: From which I will conclude, and I will get on as rapidly as possible because I want to make use of my time, that you agree with Oxenfeldt that a comparison of that type is risky?

Mr. FULLER: Right.

Hon. Mr. GARSON: Then he says: "Comparisons of prices before and after legislation are not reliable on two counts" and you quote Oxenfeldt in italics.

Mr. FULLER: That is the same as "risky".

Hon. Mr. GARSON: Well, I will not bother going into that detail. The point I want to get at is—and I cannot read what Mr. McGregor says, but just from what I have read to you here—that you are of the view that the best, or if you like to put it this way the least unreliable method of testing resale maintained prices with those not maintained, has to be a comparison of prices in states where resale price maintenance prevails with those in which it does not? And that is what Mr. McGregor said yesterday?

Mr. FULLER: That is the best method of testing?

Hon. Mr. GARSON: Of these three that are stated by Oxenfeldt.

Mr. FULLER: I would simply say it is one method.

Hon. Mr. GARSON: But you also agree because you have italicized Oxenfeldt's statement that the other two are unreliable.

Mr. FULLER: Excuse me, sir. Oxenfeldt is clearly setting out the first, second, and third, and after that he says these comparisons—

Hon. Mr. GARSON: I cannot quote Oxenfeldt, I can only quote your brief. I am just taking part of the statement made and quoted in your brief.

Mr. FULLER: I quoted all the words of Oxenfeldt from page 425 right through to the middle of page 429 which is the sum total of all he has to say about the economic effect of resale price maintenance. I think that every word is probably in one brief or the other.

Hon. Mr. GARSON: And I do suggest you dealt with these three methods. You italicized Oxenfeldt's condemnation of the two, from which I judge you approve of the other one.

Mr. FULLER: No, I have the same interpretation as Oxenfeldt—

Hon. Mr. GARSON: That is right, you agree with Oxenfeldt and Mr. McGregor agrees with both of you—although I cannot quote his brief unfortunately.

Now, you have criticized this MacQuarrie report upon the grounds that it did not go into all these facts. You say there is no statistical data in the report, but it exists. If it exists why did you not bring it forward to this committee?

Mr. FULLER: It was my opinion, sir, that it was the function of the MacQuarrie committee.

Hon. Mr. GARSON: Well, you object to the report and you have had an opportunity at the request of your organization to show that the report is wrong. Why would you not bring the material forward?

Mr. FULLER: The material can be obtained from the Dominion Bureau of Statistics.

Hon. Mr. GARSON: Is not that part of your case?

Mr. FULLER: No, I do not think so.

Hon. Mr. GARSON: Professor Fuller, if there is a single Canadian fact or a single Canadian authority quoted in your brief, would you tell me where it is?

Mr. FULLER: No, there are no Canadian authorities quoted—neither are there in the MacQuarrie report.

Hon. Mr. GARSON: Well, I am referring to yours?

Mr. FULLER: I am not criticizing the MacQuarrie committee report because they quoted no Canadian authorities; I am criticizing it because they only took a few from other sources.

Hon. Mr. GARSON: You are criticizing it because they have not taken enough American ones or British ones—

Mr. FULLER: Yes, or even French.

Hon. Mr. GARSON: I cannot refer to Mr. McGregor's brief but did you have the pleasure of hearing him yesterday?

Mr. FULLER: No, I did not.

Hon. Mr. GARSON: Then, I cannot ask you what you heard then.

Mr. CROLL: You can—

Hon. Mr. GARSON: No.

Mr. CROLL: Is there not anything in that brief that you believe he was in accord with and that you could question on?

Mr. FLEMING: May I say this?

The CHAIRMAN: The minister has only one minute left.

Mr. FLEMING: Well—

Hon. Mr. GARSON: I hope these interjections by members are not taken off my time.

Mr. FLEMING: I think it must be apparent already that it is silly not to be able to question a witness like this on Mr. McGregor's statement made yesterday. I think we are denying ourselves the benefit of observation on matters that would be of great help to the committee. Why do we stick rigidly to a rule, the full implications of which I am sure were not foreseen when the committee adopted it?

Hon. Mr. GARSON: It does not embarrass me.

Mr. FLEMING: I would like to ask the witness questions on Mr. McGregor's statement.

Hon. Mr. GARSON: I now have on the record all the material which I could have established by reading Mr. McGregor's statement to the witness.

With the remaining time I would like to refer Mr. Fuller to page 15 of his brief where he makes some comments about an example of resale price maintenance—namely aspirin. He makes a statement to this effect, and I will skip certain intervening material, "the consumer can purchase one hundred tablets—for 59 cents under resale price maintenance, and aspirins in 100's, same standard, down as low as 9 cents a hundred. He is not forced to buy—the other. If he does it is his choice. He can purchase cheaper brands in almost any drug store whether chain or independent."

Can you tell me the name of the 9 cent brand which was compared to the 59 cent brand?

Mr. FULLER: Aspirin—and I might say it is illegal to use the word aspirin in this country unless it applies to Bayer—so we are all misusing the word.

Hon. Mr. GARSON: You include yourself there?

Mr. FULLER: That includes myself, yes. The general idea, as we all know, is that aspirin, which we are talking about, is a mono-acetyl acid ester, of salicylic acid.

Hon. Mr. GARSON: Yes?

Mr. FULLER: That would come in under "no brand" and it is characterized as "no brand" either private or national, but "no brand".

Hon. Mr. GARSON: Available at 9 cents per hundred?

Mr. FULLER: Yes.

Hon. Mr. GARSON: That includes the retail mark-up, wholesale mark-up, manufacturer's profit and everything, does it?

Mr. FULLER: They are usually in cut-rate pine board stores—and whether they are using them as loss leaders I do not know but they often do use "no brands" as loss leaders.

Hon. Mr. GARSON: If they are in cut-rate pine board stores, is your statement quite correct or properly informative when you say "the customer has the choice." He has not the choice unless they are in all stores?

Mr. FULLER: But he can go to any store—

Hon. Mr. GARSON: He can go to a pine board store if he knows where it is and get them at 9 cents?

Mr. FULLER: Yes.

Hon. Mr. GARSON: What are the comparable Canadian prices in this example, you cited—of the same value but applied to Canadian conditions?

Mr. FULLER: 79 cents and 19 cents, I think.

The CHAIRMAN: Mr. Garson, this is your last question.

Hon. Mr. GARSON: Yes sir. The comparison of the 9 cent item was—



Mr. FULLER: 19 cents.

Hon. Mr. GARSON: 19 cents?

Mr. FULLER: Yes.

Hon. Mr. GARSON: And what is the name of that brand in Canada?

Mr. FULLER: As I say, "no brand". All the manufacturers have tablet machines and when they turn them out they will put your name on them if you are in business, or mine. It may be a private brand.

Hon. Mr. GARSON: One last question. In what percentage of drug stores in Canada is that 19 cent product available?

Mr. FULLER: I do not know, sir.

The WITNESS: 100 per cent.

The CHAIRMAN: Now, Mr. Thatcher, it is your turn, and in fairness I should point out that Mr. Thatcher is a graduate of Queen's University and he was probably taught economics by Mr. Mackintosh—whether he passed or not I do not know.

Mr. THATCHER: I have only two questions, Mr. Fuller. First of all I wonder if you would turn to page 9 of your brief—the large brief.

The CHAIRMAN: Would you just indicate where you are referring to?

Mr. THATCHER: "The Legislation would be Discriminatory".

The CHAIRMAN: In the center of the page.

Mr. THATCHER: Yes. The first line. "If the government makes resale price maintenance illegal it would be, in effect passing discriminatory legislation, legislation for the benefit of the larger operation to the detriment of the small." It would seem to me that one of the chief fears of some committee members is that if price maintenance is abolished small operators may be seriously harmed or actually put out of business? I would like you to express your opinion on such a danger. If possible could you buttress that opinion with concrete examples?

Mr. FULLER: I am advised to the extent, as I said last day, that I was a victim of the very situation myself twenty-four years ago. It is my opinion that if legislation outlawing resale price maintenance is put on the books it will tend toward putting the small retailer at a bargaining disadvantage with the manufacturer and putting the large chain and department stores at a tremendously greater advantage than they now have and that in the long run leads towards monopoly.

Mr. THATCHER: Can you give any specific examples of that, having happened in the past? If I remember your statement last week you said that in the drug business there was very little resale price maintenance twenty years ago.

Mr. FULLER: I do not know that I can give a specific example, I can give the general picture of what happened. The large chain stores and department stores with branches throughout the country, with sales of tremendous volume, after they had worked up the trade asked for a better discount. The manufacturers said if they are selling 40 per cent of the total factory output we will give them an extra 5 per cent. The next time they came back they wanted an extra 10 per cent, and they are cutting prices, and the small retailer is losing out to the department stores and it gets to the point where the small retailer is not selling that article. Then the article is being sold by these chain stores and department stores, and this time they come back and ask for a better price, and the manufacturer is then in the position that he cannot give them any more or he would be simply giving all his profit away. Then they say they will buy nothing from him. Then the manufacturer has to go out and build up his trade again.

The manufacturer often says, "I will buy you out," so you have a backward vertical integration there that tends towards a monopoly. It has been said that General Foods and Standard Brands were organized for that reason so they would have greater bargaining power against chain and department stores who were chiselling and trying to get better discounts. As individual firms they were not able to match it, but with the amalgamation they were able to match it.

Mr. THATCHER: You cannot lay definite facts in front of the committee, where in the past, competition from chain or department stores has put druggists out of business?

Mr. FULLER: I can give you no statistical data.

Mr. FLEMING: Some members didn't hear him tell his own experience last week. Let him tell that.

Mr. FULLER: In 1927 I was engaged in the drug business in Brantford a half a block from the main corner. Two chain stores came in about the same month and started a price war to see which one would get the business of Brantford, and six of us eventually wound up out of business. I think I was the third to go out of business, and I had lasted three months. In that block I couldn't take in a ten dollar bill except on Saturday when I might take in \$25. You just put your back against the wall and wondered where your customers had gone and you were heartbroken.

Mr. THATCHER: Was there any resale price maintenance then?

Mr. FULLER: There was none at that time.

Mr. THATCHER: In your opinion if there had been the chains would not have been able to do that?

Mr. FULLER: They couldn't have done that.

Mr. THATCHER: Since 1945 have there been many veterans set up drug stores?

Mr. FULLER: Oh, yes.

Mr. THATCHER: Can you give us any idea how many?

Mr. FULLER: I couldn't give you the number in Canada, but I think the Ontario College of Pharmacy have had 50 per cent of their students who were veterans in the last three years or more, and sometimes 75 per cent, and they go out in a year or so and enter into business.

Mr. THATCHER: Mr. McGregor admitted yesterday some companies would be forced out of business.

Mr. CROLL: He said maybe some.

Mr. THATCHER: In your opinion, what companies are likely to be forced out of business, the chain and department stores or the little druggist?

Mr. FULLER: Without resale price maintenance I would say the small man and I would like to add what one authority has said, "It is not always the least efficient that is first forced out."

Mr. THATCHER: You feel your industry is particularly susceptible to the predatory price cutter?

Mr. FULLER: That is right.

Mr. THATCHER: Do you think from your experience in the drug business that the abolition of this practice might threaten the ability of drug stores to act as public health centres?

Mr. FULLER: I very definitely do, sir.

Mr. CROLL: But not handling ice cream?

Mr. THATCHER: The matter is not so facetious for some of these veterans, who may be adversely affected.

Mr. CROLL: Don't you talk to me about veterans.

Mr. THATCHER: In other words, you would say that abolition might mean that the small drug stores would not be in a position to carry on giving the same health services to the public?

Mr. FULLER: I definitely would say so because in my way of thinking the drug store is a community institution. As far as dispensing is concerned perhaps six drug stores would be able to handle the total dispensing business of Ottawa, according to the population, but it would mean if you wanted a prescription filled in the evening or on Sunday or on a holiday, you would have to go five miles away down town to get it. The drug store just has to be in the community to handle the health needs, and if you have to have streptomycin, aureomycin and penicillin when your child has a sore throat, and a couple of hours may mean a matter of life or death you have to have a drug store there.

Mr. STUART: I believe you have suggested that discounts in connection with large purchases would be very harmful to the small merchant?

Mr. FULLER: Yes.

Mr. STUART: Isn't that the practice in effect in this country?

Mr. FULLER: It is to a certain extent.

Mr. STUART: The National Drug is a large organization?

Mr. FULLER: It is a wholesale and manufacturing organization.

Mr. STUART: I believe you quote prices of National Drug and others in your brief?

Mr. FULLER: No, sir, I do not recall having mentioned the National Drug Company.

Mr. STUART: But there would be some commodities you have listed there that would be the product of National Drug and their prices would be in line with the prices in your brief?

Mr. FULLER: I have not noted any National Drug prices whatever.

Mr. STUART: It may be National Drug have branches all over Canada?

Mr. FULLER: They have wholesale branches in each province.

Mr. STUART: Would you know if in some of their advertising they have offered the drug trade a 40 to 50 per cent discount to entice them to buy their products?

Mr. FULLER: It may be correct, I don't know, sir. My opinion was I was to be questioned on the points I made in the brief and I do not think I have that in the brief.

The CHAIRMAN: That is quite correct.

Mr. STUART: I asked that question of Mr. Preston.

The CHAIRMAN: The point Mr. Stuart was raising is that we had thought those figures you gave us would be representative.

Mr. FULLER: Is National Drug in that?

The CHAIRMAN: If National Drug is in every province in Canada it might seem odd to us if their figures are not in here.

Mr. STUART: I am not reading anything, I am just asking your opinion.

Hon. Mr. GARSON: The witness said yes they would be.

Mr. STUART: Would these huge profits, profits which appear to me to be huge anyway, suggest they are for the benefit of the consumer or the retailer?



Mr. FULLER: Is that a question for me?

Mr. STUART: Yes.

Mr. FULLER: I disagree that the profits are huge. In the first I tried to point out gross profit is based on the margin of goods, plus the volume, plus the turnover, and you take all those added together and you come out with something you hope is above your cost. It is not right to simply say 40 or 50 per cent. For instance, you could buy a pound of Epsom's salts for 10 cents and put it up in 5 or 10 cent packages and your margin is great there, but you would have to sell a ton of it a day to get wealthy on it. It just doesn't mean a thing as far as paying your rent is concerned or paying your help.

Mr. STUART: Would these huge profits, as I still consider them to be, in any way entice a retailer to push a certain brand of goods?

Mr. FULLER: They might. Each individual has to make his own buying policy.

Mr. STUART: You wouldn't consider it a huge profit if a retailer is receiving a profit which is greater than the manufacturer's price?

Mr. FULLER: Greater than what?

Mr. STUART: I can show you articles costing 19 cents which are sold at 40 cents, articles costing 98 cents which are sold at \$2, and that margin is certainly greater than the manufacturer's price.

Mr. FULLER: That may be so, but I qualify it with the statement I made before, that if you only sell one once a year or once a month it is not so much a profit. If you have it on your shelf for six months you may be losing money. It all depends on the time element.

Mr. STUART: You would not consider a 54 per cent mark-up a huge profit?

Mr. FULLER: No.

Mr. STUART: Do you have a mark-up of 40 to 50 per cent?

Mr. FULLER: No, I quoted figures in my brief.

Mr. STUART: Why wouldn't it be considered a huge profit?

Mr. FULLER: You only get 14 per cent on tobacco and you may get 40 per cent on something else, and it averages out to 32 or 33 per cent.

Mr. STUART: I am speaking of drug stores.

Mr. FULLER: Cigarettes are sold in drug stores to a considerable extent.

The CHAIRMAN: I understand these mark-ups are on selling price?

Mr. FULLER: Yes.

Mr. FLEMING: Is the sales and excise tax included in that manufacturer's price; is the figure he quoted inclusive or exclusive of the tax?

Mr. FULLER: I would say it would be inclusive.

Mr. STUART: In answering a question which was asked I believe you said this, "competition would not prevent prices from rising."

Mr. FULLER: Is that question addressed to me, sir?

Mr. STUART: Yes, I believe in answer to Mr. Carter, Mr. Preston stated competition would not prevent prices from rising.

The WITNESS: Someone asked me a question, if resale price maintenance was abolished would prices on non-branded lines rise and I said certainly.

Mr. STUART: Can you support that opinion of yours by some concrete evidence?

The WITNESS: Simply because of the fact that you try to average as we keep telling you 33 per cent on the gross, so if you lose on some you are

forced to get higher prices on some other articles. The profit on price-maintained goods is about 25 per cent, but if it was cut down 5 per cent or less, naturally you would have to charge more for other lines in order to make a profit or you would go out of business.

Mr. STUART: You suggest you have a certain over-all profit?

Mr. FULLER: We try to.

Mr. STUART: If price maintenance were abolished would these retail profits of 40 to 55 per cent be cut in any way or would they still continue to be the same as they are at the present time?

Mr. FULLER: You are talking about National Drug and the branded lines?

Mr. STUART: I don't know, I am not a druggist but I imagine National Drug would have many lines known across Canada.

The WITNESS: They are really what we call branded lines; every druggist wouldn't sell every line. Then again I would like to say this, if the manufacturer wishes to give a retailer a larger discount for his co-operation instead of spending money on radio and newspaper advertising, that is the manufacturer's policy. The druggist has not anything to do with the price, the price is set by the manufacturer, and it is his choice whether he spends money giving away radios and automobiles or discounts.

Mr. STUART: This is my last question, in the final analysis it would amount to this, that you are able as a druggist, if you are offered more than the average mark-up, to push a certain brand of goods; is that correct? In other words, if you had a mark-up of 54 per cent you would try to sell that product to the customer rather than sell a similar article where the mark-up was only 25 per cent?

The WITNESS: No, sir, I would far rather sell a nationally known maintained price product at 20 or 30 per cent than I would a non-branded item because you sell more and make more money and the price is maintained. The product is nationally advertised and the customer is sold on that particular product by advertising when he comes into my store and you get so much more business and so many more customers, and you do not have to worry about non-branded lines.

Mr. STUART: I would just like to ask this one question, why would National Drug offer what I consider fabulous profits to druggists who handle their products?

The WITNESS: That is the manufacturer's policy.

Mr. MURRAY: I haven't any questions to ask the witness, but I want to make an observation. I have been a retail druggist for thirty-two years and am vitally interested in this problem because, not only from the druggist's angle but also from the public angle as well. I want to say this morning it has become apparent that certain drug organizations may be precluded from giving further evidence. We have in the room here the president of the Drug Trading Company, which has 1,500 members, and Mr. Gould is a practising retail druggist, and inasmuch as we heard yesterday the theorist angle of this problem, I am wondering if I could appeal to the committee to consider hearing Mr. Crawford Gould, president of the Drug Trading Company.

The CHAIRMAN: As I pointed out, we have the Canadian Pharmaceutical Association here, and if they wish to have the Drug Trading or any other retailer with them, just as Mr. Preston has brought Professor Fuller to help him with the evidence, it will be all right. The fact that the president of this company has turned up is no reason why he should expect to be heard this morning. If that was the case we would have the committee room full of people who have sent us wires.

Mr. CROLL: If they will adopt him up here in front we will be glad to question him.

The CHAIRMAN: These people have come before us with their brief and it is entirely up to them.

Mr. MACINNIS: It is not only a question of what these witnesses want to do, it is a question what the members of the committee want to do with these witnesses. They have been asked questions by a number of members and there may be other members who wish to question them.

The CHAIRMAN: I intend to go right along with the witnesses here, Mr. Preston and his adviser. Mr. Gould may sit alongside if he wishes to.

Mr. MACINNIS: Both Mr. Preston and Mr. Fuller have in their brief put considerable stress on the fact that if resale price maintenance was made illegal then it would give rise to loss-leader selling. Will you define what a loss-leader is?

Mr. FULLER: I don't believe I ever used the word "loss-leader" in my brief. I described the different kinds of competition, predatory and discriminatory and so on, and from my point of view that kind of competition is a little more intense than anything implied by "loss-leader". I think it is difficult in a legal or technical sense to define what is meant by loss-leader.

Mr. MACINNIS: Do you agree with the answer given by Professor Fuller?

The WITNESS: He said it was difficult.

Mr. GOULD: Mr. Chairman, as a retailer actively engaged in business it is my opinion a loss-leader is anything we sell for less than invoice price plus overhead.

Mr. MACINNIS: In your business what percentage would be overhead?

Mr. GOULD: The average I think is 24 to 25 per cent.

Mr. MACINNIS: You would consider a loss-leader would be anything sold under 24 per cent?

Mr. GOULD: Anything where you are losing money at the point of sale.

Mr. MACINNIS: Mr. Fuller, you mentioned your own experience in business in 1927 in the drug business; do you know anything about the number of commercial failures in Canada in that year, was it high or low?

Mr. FULLER: I don't recall, sir, it was before the depression started in 1929 and 1930. As I said, I was getting along comfortably until that point.

Mr. MACINNIS: I think it would be interesting to have the figures for commercial failures because I think the fact that so many business firms have remained in business in the last year is not necessarily due to price maintenance. I have before me the commercial failures for the fourth quarter of the year 1950, issued by the Dominion Bureau of Statistics, also the number of commercial failures in Canada from 1923 to 1950, and I note that in the year 1927, that Mr. Fuller refers to, the commercial failures were quite high, 1,841, a little higher the next year and a little higher the year after that. It continues to go up till about 1933, I think, when it reached the peak. But if you take and compare 1927, 1,841, with 1947, 545, I think you must agree that there is something else besides price maintenance affecting failures.

Mr. FULLER: We have made no claim, sir, that resale price maintenance alone is responsible for a man's success or failure, but certainly resale price maintenance can make the difference whether he goes out of business or not in a price war.

Mr. MACINNIS: At a time when a buyer's market exists, but do you agree with what his position is at the present time, that in a seller's market he is pretty well protected? But what is the case in a buyer's market?



Mr. FULLER: I would not say that he is well protected just simply because there happened to be a seller's market and he can get along without resale price maintenance.

Mr. MACINNIS: Then, would you say that price maintenance tends to keep more people in a certain line of business than is required to meet the necessary needs of the community?

Mr. FULLER: No, sir, I would say the opposite, and I point out in my brief, and give statistical figures as far as they have been available to me, and it shows a decrease in the United States of 8,000 stores, I believe, since price maintenance was legalized.

Mr. MACINNIS: Well, then, it would not make any difference with the inefficient whether the price is maintained or not. Is that your point of view?

Mr. FULLER: No, I do not say that. I think I was efficient as a business man till the chains came in and started a war, and nobody could stand up under that. One man in town had four stores. He is at the point where he has only one now, he closed up three others.

Mr. FLEMING: It is a question of financial resources.

Mr. FULLER: It is a question of financial resources, not efficiency.

Mr. MACINNIS: Well, that is free enterprise.

Mr. FULLER: Let us put it this way, if you want to take free enterprise according to Adam Smith, let us take all of it, which means no government interference with business, free trading.

Mr. MACINNIS: The question I would like to ask, and which impressed me, is the one which said that the retailer had nothing to do with the price the manufacturers set; is that correct?

Mr. FULLER: That is correct.

Mr. MACINNIS: Well, in that instance the retailer is no longer an independent merchant; he is merely an agent for the manufacturer in retailing his price maintained articles.

Mr. FULLER: He is a distributor.

Mr. MACINNIS: He is a distributor but he has no discretion.

Mr. FULLER: He has discretion as to the articles he will sell.

Mr. MACINNIS: In other words he sells pretty much at a figure taking care of his own overhead, is that the position?

Mr. FULLER: Not necessarily.

Mr. MACINNIS: Well, what is his position?

Mr. FULLER: He is not bound to sell at maintained prices, he can sell higher if he cares to. It is a suggested maintained price.

Mr. MACINNIS: What is meant by the word "suggested" here?

Mr. FULLER: A price below which they suggest that we do not sell.

Mr. MACINNIS: Just suggest that you do not sell; if you sell below the suggested price, what is the result?

Mr. FULLER: They can, if they so desire, refuse to sell.

Mr. MACINNIS: You are referring to the retailer, but what would the manufacturer do if the retailer sells below the suggested price?

Mr. FULLER: He can refuse to sell.

Mr. MACINNIS: Yes, but if he does sell below the suggested price, what happens then?

Mr. FULLER: He can refuse to sell any more goods.

Mr. MACINNIS: In actual effect, what would happen if he refused to sell?

Mr. FULLER: In some cases he has.

Mr. MACINNIS: Then the resale price maintenance is not rigid, it depends on the manufacturer.

Mr. FULLER: It is not a law.

Mr. MACINNIS: No, no, I am not suggesting that it is a law. I want to know what amount of independence the retailer has in dealing with a price maintained product. Also, what action the manufacturer takes to enforce what you call a suggested price.

Mr. FULLER: He can refuse to sell his merchandise, his branded merchandise.

Mr. MACINNIS: But would he?

Mr. FULLER: He would if the retailer persisted, possibly because he feels that he has a right to protect his trade mark.

The CHAIRMAN: This will be your last question Mr. MacInnis.

Mr. MACINNIS: If he persisted, what would be the first action taken if he sold below the maintained price?

Mr. HEES: He would get a letter.

Mr. FULLER: He would try to convince the retailer that it was in the best interest of his product to sell it at the price that was suggested.

The CHAIRMAN: Thank you, Mr. MacInnis.

Hon. Mr. BEAUBIEN (Joint Chairman): I would like to ask the witness a few questions. Can there be such a thing as an independent drug store under price maintenance?

Mr. GOULD: There are a lot of us.

Hon. Mr. BEAUBIEN: I mean independent, so that you can do what you like in your own store.

Mr. GOULD: Yes.

Hon. Mr. BEAUBIEN: How does that conform with the answer you have just given? If the retail drug store sells price maintained goods lower than the price that is maintained, where does his independence come in?

Mr. GOULD: It is not necessary for him to handle that merchandise.

Hon. Mr. BEAUBIEN: Suppose he sells below the price that the manufacturer has set and the manufacturer sends him a letter and tries to persuade him to keep the maintained price, and he does not choose to do it and sells those goods below the maintained price continually, and the manufacturer prevents him from getting any more of those goods, then his independence is gone?

Mr. GOULD: Not necessarily.

Hon. Mr. BEAUBIEN: Because he cannot get the goods any more.

The CHAIRMAN: Senator Golding, a little while ago you indicated you wanted to ask a question.

Hon. Mr. GOLDING: I did not, Mr. Chairman, but now that you mention it I will. I would like to follow on from where you left off with your own situation in Brantford, Mr. Fuller. After these independent stores, such as yours, were put out of business, what happened to prices then?

Mr. FULLER: I cannot personally answer that, sir, because I took a position in the United States within six weeks afterwards and I did not follow the trend of prices in Canada from that time on.

Hon. Mr. GOLDING: You did not follow it on through past that time.

Mr. FULLER: No.

Hon. Mr. GOLDING: There has been considerable evidence given here which would, I think, lead the committee to believe that the drug business is really a get-rich-quick scheme, a regular gold mine. I have here the report of the Dominion Bureau of Statistics dealing with the operation results of wholesalers. I will read this to the committee. I find it on page 861 of the Canada Year Book 1950. I read:

These statistics assists merchants by permitting a comparison of their own operations with the average for their trade and enable them to assess the efficiency of their own phases of operation or indicate areas of operation where economies might be effected. Expenses were grouped into three sections; selling, warehouse and delivery, general and administrative, with a further classification of expense items under each function. Results were presented by sales-size groups for each trade. In addition to profit and loss data, information was obtained on sales composition, sales distribution, floor space, and other factors having a bearing on operating ratios.

Now, the operating ratios for selected kinds of wholesale businesses, this was for 1947, the first column here gives the cost of goods sold, the next is the gross profit, and then you have taken out of that gross profit selling expenses, warehouse and delivery expenses, general and administrative expense, and then you come to the column for net operating profit. And if we take groceries, we find the net operating profit was 1.68 per cent; for fruits and vegetables, 1.36 per cent; tobacco and confectionery, 1.68 per cent; dry goods, 4.51 per cent; piece goods, 7.49 per cent; footwear, 2.58 per cent; automotive parts, 5.74 per cent; hardware, 6.61 per cent; heating and plumbing supplies, 8.86 per cent; and drugs, 2.15 per cent. Now, that is a table that is in the report of the Dominion Bureau of Statistics and indicates the net profit in those particular lines of business. To me, it would indicate that in the drug business the people were not taken for a very extravagant ride by the people who are in that business.

The CHAIRMAN: What is your question, Senator?

Hon. Mr. GOLDING: I leave it there. I was making a statement.

Mr. FLEMING: Would Mr. Fuller like to comment on that?

Hon. Mr. GOLDING: I would ask Mr. Fuller if he agrees with that?

Mr. FULLER: I think you are quite right when you say we are not taking them for a ride.

The CHAIRMAN: Mr. Jutras.

Mr. JUTRAS: Mr. Fuller, I just want to refer for one moment to your reference to Adam Smith. I think you left an inference there that you did not intend to, or at least that was my impression, that there was today a great deal of interference from the state in business. Is that the view you hold?

Mr. FULLER: Yes, and I believe in it.

Mr. JUTRAS: Would you say that there is more interference in Canada than there is in the United States?

Mr. FULLER: I would want to study that longer.

Mr. JUTRAS: In your brief, on page 16, where you quote the conclusions of your authority, Oxenfeldt, you say—and this is contained in conclusion eight:

One might say that prices are subject to an enormous amount of government regulation, but only to a trifling amount of government interference.

I would hold that that would be very much the same thing in Canada?



Mr. FULLER: I would not like to pass judgment. I will tell you why I put the 12 conclusions of Oxenfeldt in the brief. I would like to have put the whole book in the brief. My contention at the beginning was that the MacQuarrie Committee did not take all the material that was available, that they took Oxenfeldt and lifted things out of the context. Immediately following the statement taken from Oxenfeldt, which was copied from the Federal Trade Commission Report, the MacQuarrie Committee came to a conclusion—and this is the basis on which I would flunk the student again for drawing a false conclusion from the statistics—and therefore I put the 12 conclusions in the brief to show that Oxenfeldt came to no such conclusion as the MacQuarrie Committee came to.

Mr. JUTRAS: On that very point, I am not referring to the MacQuarrie Committee, but Oxenfeldt did come to the conclusion that there was very little interference from government sources in business. You say there is a great deal in Canada?

The CHAIRMAN: I do not think he said that.

Mr. FULLER: I did not mean government interference.

Mr. JUTRAS: I am just trying to find out. The inference I got is that there is a great deal of government interference in business.

Mr. FULLER: Let us say government aid, help or assistance. I did not personally use the word "interference" in the sense that Adam Smith used it. He said that if the government had anything to do with business it was interference with the businessman's rights. I do not hold that view. The government helps the business man in many, many instances.

Mr. JUTRAS: Would you agree that they enjoy a lot more in the way of protection from the government than they do in the way of interference?

Mr. FULLER: Yes, I do.

Hon. Mr. HORNER: I have not attended all the committee meetings, and perhaps this angle has been gone over. The fact that the manufacturer is interested in maintaining a price, that is on branded goods, would it not be due to some of the experiences that he has had in the past, cases in which he would have failed to collect on orders sold, perhaps, to a person without the experience and understanding required to conduct business? Their experiences in the past might have been that they failed to collect, and with this system of price maintained goods they are not only sure of keeping their customer's business but they are sure to be paid for them.

Mr. FULLER: I think there is a great deal of truth in your statement. Historically, pharmacists have been professional people and not business people; they have not been trained in business, and the printing of a retail price on proprietary medicines dates back 150 years to a practice that was current in Philadelphia. Perhaps it is not germane to the subject at all, but business training of pharmacists in colleges has been lax in the past, except in perhaps about half a dozen different cases, and it is only recently in Canada that we are endeavouring to train them in order to make better business men out of pharmacists.

Hon. Mr. HORNER: Was that one of the reasons that manufacturers instituted price maintenance?

Mr. FULLER: Yes, they are a bad credit risk.

The CHAIRMAN: We have now come to the point where we may have a second round of questions, or a summing up by the committee counsel.

Hon. Mr. FOGO: I would like to ask Mr. Gould what sort of arrangement enters into this suggested price. How is that suggested price made? How is that imposed on you?

Mr. GOULD: Well, to the best of my knowledge, when a manufacturer brings out a product he has certain costs, and his selling price is based on that cost, if he is a wholesaler distributor, or if he distributes through the wholesaler, he sets a certain margin for the wholesaler, and on that he bases his resale price.

Hon. Mr. FOGO: As a retailer, now, how is the arrangement made with you?

Mr. GOULD: How is the arrangement made with me?

Hon. Mr. FOGO: How are you told? What are the mechanics of it?

Mr. GOULD: They simply suggest to us that this be sold at a certain price.

Hon. Mr. FOGO: Now, what form does that suggestion take?

Mr. GOULD: Simply a notification of the price either by word of mouth or through the mail.

Hon. Mr. FOGO: Is there any contract?

Mr. GOULD: There might be the odd contract around in the drug business, but they are very odd. As far as the independents are concerned, I think I am quite safe in saying that we are as independent as the gentleman who belongs to a union and is told what price he must demand for his services.

Hon. Mr. FOGO: But in your experience, have you been proffered a contract to sign?

Mr. GOULD: I think I have a contract of many years standing. I do not know whether I can find it today or not.

Hon. Mr. FOGO: Is it still in force?

Mr. GOULD: Still in force.

Hon. Mr. FOGO: Does it set out the penalty that you will incur if you do not maintain the minimum price?

Mr. GOULD: I cannot answer that. I have not seen it in years. I do not even know if I still have it.

Hon. Mr. FOGO: But you have not infringed it, or you have not had any necessity to become familiar with it?

Mr. GOULD: No.

Hon. Mr. FOGO: Well, generally speaking, Mr. Gould, I would take it from what you say that the suggested price is not the subject of a formal document but it is a communication from the manufacturer, or the distributor, to you—that this is the accepted price. That may come from the salesman, commercial traveller, or through a notice, or price list, or the like?

Mr. GOULD: That is true.

Hon. Mr. FOGO: It does not ordinarily mean that you sign anything that you will maintain this price?

Mr. GOULD: No.

Hon. Mr. FOGO: But it is understood that you will?

Mr. GOULD: Perhaps you can answer this, although it may have been covered. There is such a thing as a one-cent sale. I am not very familiar with the drugtrade but I see from time to time that certain drug stores hold one-cent sales where they sell two articles for the price of one plus one cent. Is that a loss leader?

Mr. GOULD: To answer that, I have never held a one-cent sale.

Hon. Mr. FOGO: That is limited to certain stores?

Mr. GOULD: I am not an agent for that company but it is what we call a business promotion, a sales promotion, to acquaint the public with their merchandise—rather than using national advertising as so many do.

Hon. Mr. FOGO: In the terms of your definition of the sale of an article at less than overhead, it would qualify, would it not, as a loss leader?

Mr. GOULD: I cannot truthfully answer that because I do not know at what price they sell to their dealers.

Hon. Mr. FOGO: You do not know the arrangement between the particular retailers who carry that sort of thing and their suppliers?

Mr. GOULD: No.

Hon. Mr. FOGO: Well, that answers my question.

The CHAIRMAN: Senator Burchill?

Hon. Mr. BURCHILL: Mr. Gould, how many years have you been in the retail drug business?

Mr. GOULD: As a retailer? You mean how long is it since I started in business?

Hon. Mr. BURCHILL: Yes.

Mr. GOULD: I am in my thirty-second year.

Hon. Mr. BURCHILL: Speaking from your experience, your knowledge of practical merchandising and all that sort of thing, you feel that you, as a retailer, would feel the impact of legislation—if legislation was introduced forbidding the practice of maintaining prices?

Mr. GOULD: We do.

Hon. Mr. BURCHILL: You would feel the impact of that as a retail druggist. You see, and the chairman will stop me if I digress too much, we as retailers are concerned with this report and any ensuing legislation; because, in that report, they submit that what is commonly termed the loss leader practice is not to the benefit of the public at large. Yet, they submit no way of controlling that.

Now, price maintenance, or maybe a better name would be "fair trade", has been a method of correcting that evil—which is admitted to be an evil. We feel the government would not want to establish something or to help establish something which can prove to be an evil. I have practiced under both systems.

Certain questions have been asked—for example: What can we do if we are faced with this loss leader menace or cut prices, whatever you want to call it?

Now, if I sell in my store a brand of merchandise which sells from the Atlantic to the Pacific at 59 cents and if it is cut, shall we say for a sale, to 49 cents—that is all very well. However, that profit must be made up in order to cover our overhead. Our overhead is fixed and we have very little control over it today. Labour is high—for which we are very happy, because when labour is high all of us are prosperous. Our labour is very high, the highest it has ever been, but with that we have no argument.

However, I will price the article in the other days of the week at 59 cents, or 69 cents. I say that because it was the practice many years ago.

The CHAIRMAN: Have you any further questions, Senator?

Mr. CROLL: Mr. Chairman, I have a resolution which I think is pertinent at this time, in view of what Mr. Gould has said. I feel that the picture would not be complete before this committee without dealing with what he terms a loss leader. So, I move, seconded by Mr. Jutras—

The CHAIRMAN: Just a moment.

Mr. CROLL: I just want to introduce a resolution. I do not expect any immediate action but I feel this is the time to put it before you in order to give the committee—



The CHAIRMAN: In all fairness, we have not come to the point where we are dealing with resolutions on the subject matter of the inquiry. We are still dealing with the witnesses. I think it is a matter which should be dealt with by the steering committee.

Mr. CROLL: No, no, Mr. Chairman. I am placing it before you so that you can place it before the steering committee and do whatever you like with it. I could have waited until such time as you closed the evidence but then the cry would have gone up "We did not have an opportunity to discuss this matter."

I will leave it with you to do with it as you see fit.

The CHAIRMAN: You regard this as a matter for notice of motion?

Mr. CROLL: Yes.

The CHAIRMAN: And not debatable?

Mr. CROLL: Yes.

The CHAIRMAN: The steering committee will decide when it will be dealt with by the main committee.

Mr. CROLL: Exactly.

I move, seconded by Mr. Jutras:

1. That no dealer shall sell or offer for sale directly or indirectly any commodity at a price less than 5 per cent above cost.
2. That this provision shall not apply to the following sales:
  - (a) of goods damaged or of goods which form the balance of a line which has been discontinued or is out of season
  - (b) of sales for charitable purposes or relief agencies
  - (c) of perishable merchandise which must be sold promptly in order to forestall deterioration and consequent loss
  - (d) of merchandise sold in bona fide clearance sales if advertised, marked and sold as such
  - (e) of merchandise sold upon the final liquidation of any business and is advertised, marked and sold as such
  - (f) under the Bankruptcy or Winding-Up Acts or by judicial order.
3. "Cost" means invoice cost to bona fide dealer or replacement cost, whichever is lower, less cash or quantity discounts, plus excise duties and sales taxes, if any.
4. "Directly or indirectly" is intended to include trade practices by way of evasion of the Act such as
  - (a) combination sales of commodities
  - (b) inflated trade-in allowances
  - (c) concealed price reductions in premiums and discounts and other sales practices, such as "loss leaders".
5. That is be made an offence, and dealt with under the Summary Convictions Section of the Code.

I am not going to say anymore about the matter at the moment except that I submit it for consideration in the usual way at a later time, and I do so in order to give the committee notice so that it may have some views on this matter. And after, in the light of all that, if it is contemplated that action should be taken, it will give counsel and the minister an opportunity to prepare whatever is necessary.

The CHAIRMAN: This will be regarded only as a notice of motion, Mr. Croll, and it will be up to the steering committee to decide when it should be put forward.

Mr. FLEMING: In view of the decision made, I must ask if this comes within the scope of the reference to the committee?

The CHAIRMAN: Would you care to read the reference to the committee, Mr. Fleming?

Mr. FLEMING: We were told to study the report.

Mr. JUTRAS: Yes, and to suggest legislation.

Mr. FLEMING: This I take it deals with loss-leaders, and the MacQuarrie Commission refrained from making a proposal about loss-leaders.

Mr. THATCHER: If the motion carried, it could throw a new light on the proposal to abolish price maintenance.

Mr. FLEMING: It seems to me that those who have appeared before us should have an opportunity to comment on it.

The CHAIRMAN: I think that the steering committee is the best place to discuss this matter.

Mr. CROLL: Yes, Mr. Chairman, but not today.

The CHAIRMAN: But in any case, since we regard this as a notice of motion, it should not be discussed today, but rather at the next meeting of the steering committee.

Mr. CROLL: That is fine. Give it time to jell.

The CHAIRMAN: Mr. Preston, Professor Fuller, and Mr. Gould, I want to thank you very much for the time and trouble you have gone to in appearing before this committee and in answering our questions.

Mr. PRESTON: And we thank you too, Mr. Chairman.

The committee adjourned.

## APPENDIX

THE CANADIAN PHARMACEUTICAL ASSOCIATION, INC.

J. W. Preston, Secretary-Manager

221 Victoria Street, Toronto 1, Ontario

Telephone Empire 3-2627

November 5, 1951.

## NEWS FROM THE FRONT •

in

## THE WAR OVER PRICE MAINTENANCE

Dear Buddy:

In every battle, team play helps to win. While your C. Ph. A. has gone into battle in the war over price maintenance (see C. Ph. A. Journal, November 1), we need your help and we need it now if we are to win.

## HERE'S SOMETHING BIG YOU CAN DO

First—As one of the leading business men in your city or town, you can encourage and arrange a meeting of the local business men.

In the fight to preserve price maintenance, business men everywhere have a common interest. Working together you become a power to reckon with. Arrange a meeting, then go ahead and discuss this problem of price maintenance. Draw up a resolution or a petition embodying your views, have it signed by all present, and through the executive offices of your local political organizations, including Liberal, Conservative, C.C.F., Social Credit, or others, demand that your wishes be officially conveyed to your Member of Parliament.

We suggest that few Members of Parliament can afford to ignore the wishes of so many representative groups of electors, providing you display organized opposition. This request for co-operation is being sent to all members of our Association throughout Canada, so where there are two or more members in any community you should work together on this job.

Second—If, as requested, you have not already written to your Member of Parliament, or to other M.P.'s of your acquaintance, why not take time to do so now.

When writing, please express your personal opinions in your own words, rather than use statements made by others. You know the problem and all its implications quite well. You know how the consumer can be exploited, because you too are a consumer as well as a business man. You know only too well where this proposed legislation, if it passes, will first be felt and who will be the innocent victims.

Third—Please remember your M.P. will likely be coming home for the Christmas parliamentary recess which, we understand, extends from December 15 to the latter part of January. This Christmas recess will be a good time to



personally contact your member or to have your business men's group invite your member to a meeting so he may hear your views.

No Member of Parliament should be allowed to return to Ottawa without being made to realize how you and other business men feel about price maintenance.

And finally, may we offer a word of caution. When making statements in defence of price maintenance, if you have occasion to quote statistics, percentages, or other information of a like nature, be sure you have authority for such statements, and always quote your authority. Always remember, if it can be shown that you are wrong in any one statement you make, all your presentation is discredited.

May we advise you that Professor Fuller of the Ontario College of Pharmacy staff is now analysing the MacQuarrie Commission report and all authoritative statements contained therein. He is also compiling statistics regarding our operations in drug stores as a basis for a further brief which your C. Ph. A. propose to present to government officials.

Submitted on behalf of the committee,

V. E. HESSELL, *Chairman.*

Flash—We have just this moment received a telephone call from Ottawa and have been informed that the Hon. Mr. Garson has announced in the House that a Parliamentary Committee of members of the Commons and the Senate is to be set up for the purpose of further investigating the question of price maintenance.

This means that opportunity will be given for further representations to the committee and if the usual procedure is followed, it would indicate that the proposed Bill will not likely be brought down at as early a date as was first anticipated.



















HOUSE OF COMMONS  
Fifth Session—Twenty-first Parliament  
1951  
(Second Session)

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JOINT COMMITTEE OF THE SENATE  
AND THE HOUSE OF COMMONS

ON

**COMBINES LEGISLATION**

Joint Chairmen—The Honourable Senator A. L. Beaubien  
Mr. James Sinclair, M.P.

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MINUTES OF PROCEEDINGS AND EVIDENCE

No. 10

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FRIDAY, NOVEMBER 30, 1951

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WITNESS:

Mr. R. A. Harris, Managing Director, C. H. Smith Company, Limited,  
Windsor, Ont., representing the Canadian Retail Federation.





## MINUTES OF PROCEEDINGS

FRIDAY, NOVEMBER 30, 1951.

The Joint Committee of the Senate and the House of Commons on Combines Legislation met at 10.30 o'clock a.m. The Joint Chairmen, The Honourable Senator A. L. Beaubien and Mr. James Sinclair, M.P., were present, Mr. Sinclair presiding.

*Also present:*

*For the Senate:* The Honourable Senators Aseltine, Burchill, Fogo, Golding, Horner, Lambert, Vaillancourt.

*For the House of Commons:* Messrs. Beaudry, Blair, Boucher, Carter, Mrs. Fairclough, Messrs. Garson, Harrison, Hees, Jutras, MacInnis, McLean, (*Huron-Perth*), Shaw, Sinclair, Stuart (*Charlotte*), Thatcher, Welbourn.

*In attendance:* Mr. Guy Favreau, Counsel for the Committee; Mr. R. A. Harris, Managing Director, C. H. Smith Company, Limited, Windsor, Ontario, representing the Canadian Retail Federation.

The Chairman presented the Fourth Report of the Sub-Committee on Agenda and Procedure which reads as follows:

### FOURTH REPORT

THURSDAY, NOVEMBER 29, 1951.

Your Sub-Committee on Agenda and Procedure met on Thursday, November 29th and agreed to recommend:

1. That on Tuesday, December 4th, the Committee sit at 10:30 o'clock a.m., and at 3:30 o'clock p.m., and that it call representatives of the Canadian Manufacturers Association for the morning sitting, and recall Mr. F. A. MacGregor for the afternoon sitting; that on Wednesday, December 5th, the Canadian Jewellers Association be heard at 3:30 o'clock p.m., and on Thursday, December 6th, the Ontario Retail Hardware Association be heard at 10:30 o'clock a.m.
2. That your Sub-Committee meet on Tuesday, December 4th, or Wednesday, December 5th, to consider Mr. Croll's motion of which notice was given at the meeting of November 29th, and such other notices of motion or proposals as may in the meantime be referred to it.
3. That on Friday, December 7th, the Committee sit at 10:30 o'clock a.m., to consider the proposed draft bill before it, and such other motions or recommendations reported by your Sub-Committee.
4. That the briefs of all organizations which have been invited to make representations to the Committee be printed as appendices to the daily proceedings; and that in addition the briefs voluntarily submitted by the T. Eaton Company Limited, and the Western Garment Manufacturing Company Limited be also printed.
5. That the Resolution passed by the 27th Annual Meeting of Delegates of the Saskatchewan Wheat Pool, held in Regina, November 6-16, 1951, and the letters addressed to the Committee dated November 16, 1951, by the Canadian Chamber of Commerce, and the Dominion

Joint Legislative Committee Railway Transportation Brotherhoods, dated November 27, 1951 be printed as appendices to the Committee's Minutes of Proceedings.

6. That Mr. Thomas N. Phelan, K.C., be employed as Committee Counsel at a fee of three hundred (\$300.00) dollars for each day of attendance at Ottawa, and Mr. Guy Favreau as Assistant Counsel at a fee of One hundred and Fifty (\$150.00) dollars for each day of attendance at Ottawa; and that, in addition, each of them be granted an expense allowance of fifteen (\$15.00) dollars per diem while in Ottawa on the Committee's business, as well as being reimbursed for actual transportation expenses to and from Ottawa; both appointments to be effective as of Tuesday, November 13th, 1951.

CHAIRMAN.

Mr. Jutras moved that the Fourth Report of the Sub-Committee on Agenda and Procedure be concurred in.

Mrs. Fairclough moved in amendment thereto that the third recommendation contained in the said report be deleted and the following substituted therefor:

That the sittings of the Committee be extended beyond Thursday, December 6, and that the T. Eaton Company be called, and such other witnesses as other members of the Committee may deem desirable.

And the question having been put on the said amendment, it was negatived on the following division:

*Yeas:* The Honourable Senator Horner. Mr. Blair, Mrs. Fairclough, Messrs. Hees, MacInnis, Shaw, Thatcher,—7.

*Nays:* The Honourable Senators Beaubien, Burchill, Golding. Messrs. Boucher, Carter, Garson, Harrison, Jutras, Roberge, Welbourn,—10.

And the question having been put on the motion of Mr. Jutras, it was resolved in the affirmative.

Mr. Harris was recalled and questioned.

Mr. Harris tabled a statement relating to certain articles of merchandise on which resale prices are maintained, and certain articles on which resale prices are not maintained, which is printed as *Appendix A* to this day's Minutes of Proceedings and Evidence.

Mr. Stuart tabled price lists of L. H. Packard & Co. Limited, Montreal, Quebec, and the Savage Shoe Company Limited, Preston, Ontario, which are printed as *Appendices B* and *C* to this day's Minutes of Proceedings and Evidence.

The witnesses retired.

At one o'clock p.m. the Committee adjourned until Monday, December 3, at 10.30 o'clock a.m.

A. L. BURGESS,  
Clerk of the Committee.



## EVIDENCE

NOVEMBER 30, 1951

10.30 a.m.

The CHAIRMAN: Will the committee come to order. The first order of business is submission of the fourth report of the subcommittee on agenda and procedure which met yesterday. The report reads as follows:

(See Minutes of Proceedings)

Mr. JUTRAS: I move adoption of the report.

The CHAIRMAN: Mr. Jutras moves adoption of the report.

Mrs. FAIRCLOUGH: With reference to the last date on which witnesses will be heard: as was stated yesterday by one member of the subcommittee we felt very strongly that The T. Eaton Company should be heard, so I would like to move that the sittings of this committee be extended beyond Thursday and that The T. Eaton Company be called, and such other witnesses as other members of the committee may deem desirable.

The CHAIRMAN: You have heard the amendment of Mrs. Fairclough. It was discussed yesterday by the steering committee. The reason, again, that the steering committee turned it down was because of the line or objective that we have been following, that the principal reason for the appointment of this committee was to give to those who have protested against the proposed legislation an opportunity to present briefs and, if the committee so decided, to call them before us.

Mr. MACINNIS: Could I have a word, Mr. Chairman. I am inclined to support Mrs. Fairclough's amendment, for this reason. On various occasions during the sittings of the committee there was some comment made on The T. Eaton Company, and the suggestion made of the advantageous position that the company would be in, as well as other large companies, if price maintenance was made illegal, and for that reason I think we should have The T. Eaton Company here and let the members question their representative. It should not take very long. Besides, I think we agreed at the beginning to hear those who in any line of manufacturing or retailing dissented from the main brief. I understand that The T. Eaton Company takes a dissenting stand, and for that reason—I do not feel too strongly on it—I think there is a good ground for calling them.

The CHAIRMAN: I will put Mrs. Fairclough's amendment to the committee.

Hon. Mr. GARSON: Would you just outline what the amendment is.

The CHAIRMAN: Mrs. Fairclough has suggested that as well as groups that have been called—this was also before the steering committee yesterday—that The T. Eaton Company be called.

All in favour of Mrs. Fairclough's amendment?

Hon. Mr. BURCHILL: Has The T. Eaton Company asked to be called?

The CHAIRMAN: No.

Mr. THATCHER: What did they put the brief in for?

The CHAIRMAN: They submitted a brief.

This is a decision which is now being made, properly, by the committee.

Those in favour of Mrs. Fairclough's amendment? Opposed?

The amendment is defeated 8 to 7.

Mrs. FAIRCLOUGH: Because of the narrow margin, Mr. Chairman, I think we better have a recorded vote.

The CHAIRMAN: Those in favour of Mrs. Fairclough's amendment will answer yes and those against, no.

(A recorded vote was then taken and the amendment was negatived).

Mr. Jutras' motion is that the fourth report of the steering committee be adopted. All in favour? Contrary?

Carried.

We will resume questioning of the Canadian Retail Federation and we will begin by having a summary of questions from the committee counsel, Mr. Favreau.

Mr. R. A. Harris, Managing Director, The C. H. Smith Company, Windsor, Ontario, called:

*By Mr. Favreau:*

Q. Mr. Harris, as you know, this committee has decided not to ask for any specific figures from your group, but you have been allowed, should you desire to do so, to offer any figures concerning prices, or otherwise, that you wish. Have you taken any decision in that respect?—A. Yes, we have.

Q. Will you state to the committee what you have decided to reveal to this committee?—A. Mr. Chairman, in our brief it was stated, while their cannot be conclusive evidence on this point, it should be pointed out that there is sufficient data available to indicate that retail margins on resale price maintained lines are, if anything, lower than on those lines which are not price maintained—quite contrary to the conclusion in the report, referring to the MacQuarrie report. Now last week—

Hon. Mr. GARSON: Could I interject there, Mr. Harris? Would you identify the conclusion that you are referring to by reciting it? You say "quite contrary to the conclusion in the report". Would you identify it as you go along so we will know what you are talking about?

The WITNESS: I am not sure it was given directly in the brief. Could we look at it and refer to it at a later time?

Hon. Mr. GARSON: Yes.

The WITNESS: Last week in making our submission we pointed out that we considered it a rather scandalous thing that conclusions should be reached without actual evidence, and we offered to produce what little material could be gathered together in the course of four or five days to indicate that a disparity does exist between the mark-up on price maintained items and non-price maintained items. We are pleased to table it this morning. They are not conclusive, gentlemen, as you will realize, but we think they are indicative and we might suggest as we suggested last week that a conclusion as important to the economy of this country as that which is proposed by the legislation in mind should not go into effect without some facts and figures behind it and without much more profound and thorough investigation than we were able to give this in the very short time at our disposal.

Mr. THATCHER: I wonder if Mr. Harris has those figures prepared so each member can have a copy?

The WITNESS: I am sorry, Mr. Chairman, but this was completed at about 8 o'clock last night and I think we were able to get off one set of typed copies. You might like to distribute them at your discretion.

The CHAIRMAN: We appreciate your difficulty. These figures, of course, will be part of the record.

The WITNESS: If you will refer to the figures we have produced you will note first we have a column describing the item, next we have a column headed price maintained percentage mark-up of selling price, and the next column is headed not price maintained mark-up of selling price. What we attempted to do was find the equivalent products price maintained and not price maintained so we could get a comparison on that basis. There were, I think, five companies which contributed figures to us and we tried to pick out appropriate departments and departments which were not presenting a brief of their own. This tends towards the soft goods lines since I believe the Electrical Appliances Association will be presenting a brief of their own and also the hardware dealers.

We first of all took men's cardigan sweater coats and the price maintained item shows a mark-up of 36.1 per cent, non-price maintained 39.2 per cent. Top coats shows a mark-up of 33.8 on price maintained, and 36.6 per cent on non-price maintained coats. The next classification is one of hosiery and there I see no point in going into detail.

*By Mr. Thatcher:*

Q. Are you in a position at the present time to tell us in each case the manufacturer or brand?—A. The stores gave these figures on condition their names would not be revealed. I would be very glad to show it to anyone off the record.

Q. Without indicating the store or stores can you give approximately the locality and city in which this store is established, which would not compromise anybody?—A. I do not think that is possible.

*By Hon. Mr. Garson:*

Q. You know it but you won't disclose it?—A. That is right.

Q. While we can accept your story we have no way of checking as to whether it is accurate.—A. I would be very glad to submit it privately.

Q. Have you the prices on these articles as well?—A. Yes.

Q. Prices for each one of these articles?—A. For each one of these articles, cost and selling price. In the case of women's hosiery I see no point in going into each particular line listed. It becomes quite clear that the price maintained items as opposed to the non-price maintained items, which are privately branded items, are in most if not every case a lower mark-up.

The next classification is ladies' slips and you will find there is one slip which is not price maintained which has a lower mark-up than the price maintained articles. As I say this is not consistent throughout. We have tried to be fair in the selection of our items. It shows ladies' slips have mark-ups 36.2 per cent, 36.6 per cent, 37.9 per cent, and one non-price maintained slip has a mark-up of 35.1 per cent and another 38.3 per cent. Ladies' panties 37.1 per cent on price maintained articles, 38.2 per cent on non-price maintained articles.

The next is junior girls' vests and briefs, and the price maintained item is 35 per cent. Now, in this case a different procedure was followed by the store involved, and they took the over-all mark-up for all items in the department for the year to date and showed a comparison of 35 per cent for price maintained articles against an average mark-up for items in the department of 35.5 per cent.

The next group has to do with infants' wear and we have a diaper item which shows a mark-up of 24 per cent, infants' vests 35 per cent, infants' briefs 35 per cent, and the average mark-up for the department is 38.6 per cent.



Q. That is on identical merchandise?—A. On all infants' lines.

Q. Including the ones you specify and all others besides?—A. Yes.

Q. And you say that is a comparison?—A. Yes, sir, because these were the only price maintained items in that department.

*By Mrs. Fairclough:*

Q. Would you repeat those prices again because they are much lower than the average?—A. The average is 24 per cent; infants' vests 35 per cent, infants' briefs 35 per cent, and the average for the department is 38·6 per cent.

Q. Those are the only three in the department price maintained?—A. In that particular store.

*By Mr. Jutras:*

Q. On diapers or on all infants' wear?—A. All infants' wear.

*By Mr. Hees:*

Q. These were the only price maintained items in the infants' department?—A. Yes.

*By Hon. Mr. Horner:*

Q. What was the percentage on the price maintained article?—A. In the case of diapers 24 per cent, vests and briefs 35 per cent, and those were the three price maintained articles.

*By Hon. Mr. Garson:*

Q. Did you have any non-price maintained diapers in the department?—A. No.

Q. Did you have any non-price maintained articles among the articles you have named?—A. Yes.

Q. How do they compare?—A. They would be higher.

Q. Have you the figures?—A. No.

Q. That would be a fair comparison?—A. I do not think so, sir, I think the most conclusive comparison is the average mark-up for the department versus the mark-up for non-price maintained lines.

*By Mr. Thatcher:*

Q. Did you make an effort to pick figures which would bolster your case?

Mr. MACINNIS: That is an unfair question besides being very foolish. You are asking if he is trying to give us evidence that supports his case.

Mr. THATCHER: I would like to ask it, nevertheless.

Mr. MACINNIS: I have no objection.

The CHAIRMAN: I think it is an unfair question. Obviously these gentlemen are here to put their best case forward for their side, and we understand that.

Mr. MACINNIS: It doesn't mean, Mr. Chairman, that they are not perfectly fair in the evidence they are bringing forward.

Mr. THATCHER: When Mr. Harris started he said these figures weren't conclusive and he used the word "indicative." Of course if a few were picked here and there to bolster the case they would not be indicative.

The WITNESS: Mr. Chairman, may I answer Mr. Thatcher in this way, that in this particular case that happens to refer to our own store, I simply asked the department manager to give me a list of price maintained articles and give me the over-all mark-up for the year to the end of October, and this is the result.

*By Mr. Thatcher:*

Q. Are we to assume in your particular store the general rule is the mark-up on price maintained goods is lower than the mark-up on non-price maintained goods?—A. That is true; that is the very substance of our brief.

Hon. Mr. BEAUBIEN (*Joint Chairman*): That is the same category of goods?

The WITNESS: Yes, the same category. The next group is bedspreads. Here we were unable to find a direct comparison, we had to take homespun and chenille, and homespun showed a 33 per cent mark-up on price maintained articles, 41 per cent on non-price maintained articles. There were two other bedspreads with a 34 per cent mark-up on price maintained goods and 39 percent on non-price maintained goods. We have a note that these bedspreads are not exactly comparable articles but may indicate mark-ups for this particular type of merchandise.

Now, gentlemen, we reach an item which is one of the exceptions. We found men's rubber boots price maintained had a 33·2 per cent mark-up and the nearest non-price maintained article was knee-length rubber boots with a mark-up of 29·9 per cent. Men's scampers show a 34·2 per cent maintained mark-up, compared with the non-price maintained mark-up of 36·5 per cent. With children's shoes we again have an exception in the case of this particular store where price maintained shoes give a slightly higher mark-up than non-price maintained, which they are selling under a private brand. We have a group of women's rubber footwear showing mark-ups of 29 per cent, 36 per cent, 32 per cent, 37 per cent and again 36 per cent on price maintained items. The average for the women's shoes department is 41·5 per cent. In that particular store it was impossible to find a comparison with non-price maintained items because there were not any in that classification. We have an item of shaving cream showing 34 per cent mark-up, and a private brand 45·5 per cent. Tooth paste was 34·1 per cent mark-up and the private brand was 41·7 per cent. Men's shirts, which is a very important classification, showed mark-ups on price maintained shirts of 34·3, 33·3, 34·3 and 36·7 per cent as opposed to non-price maintained lines showing mark-ups of 37·5, 36·1 and 39·7. In men's hosiery on price maintained lines we show a mark-up of 32 per cent on non-price maintained goods and one item of 35 per cent. We show spun nylon hose 38·3 per cent, and sheer nylon 36·4 per cent, and the two non-price maintained items were 39·7 and 39·1 per cent. Finally on that page there is sleeveless jersey men's underwear, and price maintained articles were 41 per cent and non-price maintained 40·3 per cent. That is another case where non-price maintained articles are slightly lower. We have a group of blankets price maintained which show mark-ups of 32·1 per cent, 34·1 per cent, 33·8, 34 and 30 per cent, and the average mark-up in the bedding department is 35·3 per cent, all of those blankets being under the average for the department. There was one non-price maintained blanket with a mark-up of 37·3 per cent.

Now we get to the next to last group of toys and there we have a 24-inch tricycle price maintained showing a mark-up of 27·3 per cent, wagons 25·3 per cent, kiddy cars 27·4 per cent, toy train transformers 30·6 per cent, toy trains 37·2 per cent, mechano sets 32·7, record players 30·5 per cent, bicycles 36·6 per cent, and the average mark-up for the toy department is 37 per cent.

Lastly in the sporting goods department there are outboard motors 30 per cent, bowling balls 20·7 per cent, golf balls 33·3 per cent, bicycles 30·2 per cent, skates 32·6 per cent. All these are price maintained and the average mark-up for the sports department is 34·3 per cent.

We suggest, Mr. Chairman, that those figures are indicative of the fact that price maintained items show a lower mark-up than non-price maintained items and they warrant further factual consideration.

*By Mrs. Fairclough:*

Q. Would you say at this point, for the record, whether these percentages are figured on the selling price?—A. On the selling price.

*By Mr. Jutras:*

Q. Would it follow from that that the selling price is higher?—A. Have you any specific example in mind?

Q. You refer to mark-up on the selling price, is the selling price to the consumer necessarily higher in these cases?—A. We try to pick them as closely to each other in price as we can.

*By Mr. Favreau:*

Q. Do you not think it would have been more illuminating for the purpose of the committee to set up respective consumer prices next to the items?—A. I think it would. I am sorry we did not do it. We would be very glad to give it to you now on any item that you choose.

Q. Does the fact not remain that if these mark-ups are higher with each of the smaller retailers, the client in the case of the non-price maintained article may, if he can succeed, obtain from the retailer a reduction in price—which he could not do on the price maintained articles? Can he obtain a reduction in price?—A. The customer?

Q. Yes.—A. Well, I am assuming, Mr. Favreau, that merchants have a firm price and that they do not barter. Some may, I do not know.

Q. In the light of the general contention that resale price maintenance has, as one of its objects, the securing of a certain assured margin of profit for the retailer, do I take it, on these price maintained articles that if the price were no longer price maintained the mark-ups would become reduced?—A. I think the manufacturer could answer that better than I can, Mr. Favreau. I do not think there is any question but that those which are best known will be used as footballs—and the price will be reduced to the public; and therefore the mark-up to the retailer will be less.

Q. In your experience can you attribute to these higher mark-ups, at least on the list which you have supplied there, on the part of the non price maintained articles any particular reason?—A. Why the mark-up is higher?

Q. Yes?—A. Yes, the item has to show a higher mark-up to become attractive to the retailer—so that he will stock it. The mark-downs, generally speaking, are higher on non price maintained items than on price maintained items—because the risk is greater.

Q. Do I take it in most cases the manufacturer's price is a little bit lower than in the case of the resale price maintained articles?—A. No, I did not say that.

Q. But would that not be a fact, though?—A. That the manufacturer's price is lower?

Q. In most of those cases? For the very articles which are listed on those three pages?—A. Yes, that would follow—if they are selling at the same price.

Q. Referring to the infants' department, is it not a fact that especially in that department non price maintained articles to a great extent consist of home-made articles which are sold to the retailer by individuals and not by large manufacturers? That is especially true in those departments?—A. That would not be my opinion.

Q. I am just asking.—A. I would say the great majority would be manufactured items.



Q. Are there not many home-made articles in the infants' departments?—  
A. Very few in the total of the country.

Q. But those are usually sold at a higher price?—A. The ones made at home?

Q. Yes?—A. I have no experience with it.

Q. I now refer to your brief, Mr. Harris and I will refer particularly to page 2, point number 5. I will read from point number 5 the following sentence:

A survey of retailers' margins for price maintained goods shows they are by no means excessive in terms of the traditional cost of merchandising particular products.

Would you explain to this committee what your association or group means by "traditional cost of merchandising"?—A. Mr. Chairman, "traditional cost" means this. With some items there is a high element of service or a high element of risk so, traditionally, a higher mark-up is required in those departments than in departments where a lower element of risk or service is involved.

Q. And on page 4, in the third paragraph referring to a similar subject, covering both levels of distribution apparently, we read:

Retail margins for comparable price maintained goods offered by different manufacturers do not vary to any marked degree because there is a knowledge at the manufacturing level of the established cost of distributing that class of goods.

Would it be fair to say there is such a thing in marketing as the approximate cost upon which one can fix in advance the margin which will really benefit all of the distributors of a particular category of goods?—A. I do not understand the question, Mr. Favreau.

Q. Can we say in advance, or decide in advance, that there is a real average cost of distribution which we can take into consideration in fixing the margin which will be profitable to all distributors of a particular article?—A. Well, I think that is determined largely by competition.

Q. What do you mean when you say the manufacturer is the one who knows in advance the tradition cost of merchandising. I presume that must be average cost to his distributors—so that he can fix the price himself which will give all of the distributors a fair margin of profit?—A. I do not think we referred to traditional cost of distribution.

Q. That is what I take from those statements on pages 2 and 4, when you state that manufacturers have to take into account or they have to have knowledge at the manufacturing level of the established cost of distributing that class of goods? I may not have read your brief correctly but I gathered that was one of the elements that was taken into consideration by the manufacturer in advance in setting his price so as to ensure or guarantee the retailer or wholesaler a fair margin of profit?—A. Yes.

Q. Now, is it not a fact that the cost of merchandising and distributing, even in trade of the same category of goods, varies widely with different wholesalers or retailers—with each individual?—A. There is a difference in cost of operation, undoubtedly.

Q. Which would reflect on the respective margins of profit of each of the dealers in one particular brand of article?—A. Yes.

Q. Would you say that these figures from the Dominion Bureau of Statistics, for instance, would reflect quite accurately the ranges between cost of merchandising in certain categories—for instance in the wholesale dry goods business? I see that for the middle range—that is not taking the extreme low or the extreme high but the middle range, the expense of distributing dry goods would be from 10.1 per cent of the gross sales price to 16.7 per cent—

being a margin of 6.1 per cent. That is just in the middle range. Would that be approximately right?—A. I would have no knowledge of those figures. I have never seen them.

Q. In the hardware business I see that the two figures, the lower and higher in the middle range, would be 11.1 per cent for those having the lower cost of merchandising and 19.0 per cent for those having the higher cost—in the middle ranges?

If that is true could that not be one factor which should enable a particular distributor to make his purchaser profit by that difference in cost of merchandising, in the form of lower prices?—A. Well I would like to take specific cases if it were possible—because I think broad generalizations of that nature are very dangerous. Take the wholesaler in the dry goods business. What does he carry? How wide a range does he carry? Is he carrying dresses? If so, then he needs a much wider margin than if he is simply carrying flannelette. Is he carrying silverware? I think the character of the merchandise they carry determines to a great extent the margin that they require.

Q. Even as between dealers or retailers carrying on exactly the same line of merchandising, is it not a fact that there is sometimes in the same city, as between two stores, a tremendous difference in the cost of merchandising?—A. In the cost of merchandising?

Q. Well, if you include upkeep of the business, of the store, employees, services rendered, and all those items which enter into cost?—A. There is certainly a spread in the cost of operation. One store might be more difficult to heat than another. How important that would be in the final operation of the business I would not know.

Q. On page 3 of the brief—and this has been and is one of the arguments advanced by many groups in favour of resale price maintenance—you state: "Where the buyer has no brand assurance and production is only to meet a price, there may be a corresponding decline in quality—but the consumer has no simple method of knowing, which means that the so-called advantage that is obtained is merely illusory."

Would you be prepared to enlarge on that principle and state in what manner and to what extent it is your opinion, and the opinion of your association, that resale price maintenance in branded goods is intimately linked with the maintenance of quality or the assurance of quality?—A. It is very intimate and linked very closely because it is connected with brand. I think I said all of this last week, but brand is the protection of the public over a period of time in those items where wear and use are important factors. If you will remember, I gave the illustration of a man's shirt. Where a particular brand of shirt is found satisfactory year after year after year, the manufacturer is going to take great pains to see that the quality of that shirt is maintained. So, if I remember the phrase correctly, "the most priceless ingredient in a product is the integrity of its maker."

Hon. Mr. HORNER: We all understand that—even if you are hiring counsel the cheapest one is not the cheapest in the long run.

Mr. HEES: Hear, hear—especially if you go to jail.

The WITNESS: So, brand is the protection of the public.

Let me still stay with these shirts. Another shirt that is offered to the public, unbranded and on the counter, may look exactly the same as the branded shirt. However, those of you who know textiles know that there is filler used in cloth and, by the use of filler, two fabrics can be made to look very much the same but they are very different in quality—wearing quality. So the one that is heavily soaked with filler, as soon as it goes through the wash it goes open and slazy, whereas the other one, which is a genuine piece of cloth, stands up and gives the wear.

*By Mr. Shaw:*

Q. How do you account, Mr. Harris, for the fact that, integrity being so important in connection with a brand name, that so frequently the manufacturer of branded goods will authorize the sale of seconds or soiled commodities at a lower price?—A. How do I explain that?

Q. Yes. Would it not be far better, and basic to your argument, for him to withdraw those articles from the market entirely?—A. Well, I think it is fine evidence of the integrity of the manufacturer that he does have seconds, and when they are sold as seconds he is declaring them as seconds and not as firsts. He must market them and he is marketing them honestly by marking them as seconds.

Hon. Mr. HORNER: He does not want to injure the reputation of his first quality goods, and his good name as a manufacturer. Oftentimes, too, seconds turn out very well in wearing qualities.

Mr. SHAW: I agree that if he declares they are seconds it is an honest practice, but I was wondering what effect that might have, let us say, on the integrity—it is not the best word—of him as a manufacturer, because when an individual buys that shirt with a brand name, he knew when he bought it that it was a second, but it does not give the service.

Mr. BEAUDRY: Nor does he pay the price.

Mr. HEES: It was advertised as a second; he knew what he was buying.

Mr. SHAW: That is right. I am just trying to find the effect on the brand name of that product.

The WITNESS: It is a great protection and guarantee for the public in their buying, and in fact, from experience, when products of manufacturers of high repute are put on sale, when they are seconds, there is a very great public demand for them.

*By Mr. Jutras:*

Q. Is it not a fact that in these cases the brand name is not on the product?—A. It may or may not be.

Q. In many cases it is taken off.—A. It all depends when it became a second, before or after the name was put on.

*By Mr. Favreau:*

Q. The last question. On page 5 I read the following suggestion on the part of your group:

Since the retailer will undoubtedly be selling other goods which are not price maintained, it is perfectly in order for him to reduce the prices on those articles or accept higher trade-in allowances on resale price maintained goods where this is feasible.

Now, is that not a contradiction of a denial of the principle of resale price maintenance, the assumption that if price maintenance cannot be departed from directly it could be in an indirect manner by way of larger trade-in allowances?—A. Mr. Chairman, I answered this last week. Do you wish me to answer it again?

Mr. FAVREAU: That is all, then.

The CHAIRMAN: The first person on the list today is Mr. Jutras.

*By Mr. Jutras:*

Q. To begin with, on your comparison of prices, you did intend to indicate that the mark-up was higher, if I understand you right, on the non-price maintained articles than it was on the price maintained articles.—A. Generally speaking.



Q. Would you say that this higher mark-up is due to the fact that the mark-up is not quite high enough on the price maintained goods and that the others have to carry them?—A. We would like to see a higher mark-up on price maintained items, yes.

Q. I am not trying to embarrass you.—A. I am not feeling embarrassed.

Q. The only point is, do you feel that you need a higher mark-up on the non-price maintained goods to carry the others?—A. Yes.

Q. In comparing the two practices, is it not a fact that when you handle price maintained goods you must give preference to those goods over the others?—A. One must give preference to them in what way?

Q. I mean, if you handle price maintained lines, although you are expected to have those particular lines out in front, that many of the others are liable to be put under the counter?—A. Every retailer is going to promote most the things that sell best, things that people want most, and if that is a price maintained branded item, then I would answer your question in the affirmative, that he will give it first place in display and in his selling effort.

Q. But is not the retailer under a certain obligation, for instance—let me put it the other way: would he not get into trouble with his supplier if, for instance, he pushed any other lines that are not price maintained as against the price maintained lines I think the Frosst case, for instance.—A. No, I would not think so. It is a free world, we hope, still.

Q. Is that not what happened in the Frosst case?—A. I am not familiar with the Frosst case.

MR. BEAUDRY: By the way, Mr. Chairman, have we had the declaration and answer to the declaration and the judgment in the Frosst case included in the record?

MR. FAVREAU: I received it and it is being translated, and the first time that it is asked for it will be distributed, so if you are asking for it—

The CHAIRMAN: We will table it and print it as an appendix.

MR. BEAUDRY: I think, then, we should not refer to it till we have all the facts before us.

MR. JUTRAS: I was not referring to the judgment in the Frosst case; I was referring to what brought the question into court.

The CHAIRMAN: Mr. Harris, in any event, said he had no knowledge of it.

*By Mr. Jutras:*

Q. I was under the impression that a man who was handling a price maintained line had to give it a certain preference over others, that that was his understanding with the supplier. Suppose, now, that this price maintenance practice is done away with. I assume, then, that the other non-price maintained articles that are now on the market will have a freer access to the public than they now have, and since they have a larger mark-up now than the mark-up on the price maintained articles, and if they come down to same mark-up as the price maintained articles then that would mean a cheaper article to the public because the cost to the dealer now is lower and since it has a larger mark-up at the present time.

The CHAIRMAN: I wonder if you could break that question down, Mr. Jutras. I am having difficulty in following you.

MR. JUTRAS: I think the witness has got the point.

The WITNESS: Mr. Chairman, I think I have the point, and I think Mr. Jutras has stated the problem with about the confusion that is in everyone's mind. I tried to put it in writing today. I tried to state it this way:

"Government states it believes in free enterprise. Free enterprise has developed price maintenance. Government is against price maintenance. Abolition of price maintenance means cut prices. Government

says bring in legislation to prevent price cutting or loss-leaders. Government believes in free enterprise."

and I just made a little note at the end here, "ha-ha."

*By Mr. Jutras:*

Q. My point was simply this, and I do not think it is at all involved. If the manufacturer who is to compete with the price maintained goods now has to offer larger margins to get his product on the counter, and even then has difficulty in doing it—as there are certainly indications to that effect—then if there is no price maintenance I assume he could keep the mark-up down to the same level as the others, and from that will inevitably flow a lower price to the consumer.—A. Well, Mr. Jutras, if a retailer finds that a price maintained item does not pay him, he drops it. Likewise, if he finds a non price maintained item does not pay, he drops it, and his test in both cases is, primarily, what is the demand for it from the public, what is the rate of turnover, what is his margin. All those factors go to determine the profitability in the sale of any item, but you are suggesting, I think, that the manufacturer, once he is dictating whether or not how much he will sell, the manufacturer may do that but the retailer has the right to put the line out just as the manufacturer has a right to take the line out.

Mr. BEAUDRY: May I make an observation, Mr. Jutras?

Mr. JUTRAS: My time is running out.

*By Mr. Jutras:*

Q. I realize the retailer is free to a certain degree to drop the line but, on account of the aura of great respectability, of quality, that has been created around those price maintained articles, he is not quite free because people have been driven to that particular product on account of the practice, and if he wants to bring them into the store he must almost of necessity handle that product. Now, I know you are going to tell me there is quality there and everything else connected with it that is advertised, but I still say, in some cases at least, that this is not quite the case. For instance, we were given the case—referred to by the Minister of Justice—by Professor Fuller on the item of aspirin. Now, there are aspirins that are price maintained that sell at—I just forget the price, I think they are 18 cents in Canada—and then there is a long list of aspirins selling right down to 9 cents a hundred that can be had by the public, but I know, as a consumer, largely because of this advertising and this price maintenance, I always went into the drug store with the idea that I had to buy the best and I paid the highest price for aspirin on the assumption that it was the best aspirin and that I was getting more value for my money. Now, thanks to Professor Fuller, I am told that they are all exactly the same product, there can be no difference because their content is fixed by law. Actually, I have wasted my money all these years by sticking to this particular brand name.—A. Perhaps your headache was cured more quickly on account of the price you paid.

Q. No. It is exactly the same product, and I had a bigger headache in paying for the dearest product.

The CHAIRMAN: This is your last question, Mr. Jutras.

*By Mr. Jutras:*

Q. I have one last question. This is entirely along a different line. I want to refer to your paragraph 6 on page 2. Now, I know you did not write the brief yourself, but I think upon reading that paragraph you will realize that these three lines are entirely unjustified, if I may say so, and are certainly uncharitable to the primary producers of this country. I think there is a very big misunderstanding on the part of your organization on this question of

orderly marketing. Now, just briefly and in two words: if I may refer to Professor Fuller, in his brief he pointed out that the wheat market in the United States was the only pure competition that existed, and that it was the only pure competition on the farmer's side, but as soon as it got to the elevator, then if there was only the one elevator it became a monopoly, so the farmer was in a position where he had to face what we call pure competition, or at least the purest competition that we could arrive at, in everything he had to buy, articles that were to a large degree protected by tariff, excise taxes, embargo and what not, and so he had to do something about it; but, and here is the point, he did not resort to private practice in his own hands, as this infers by calling it discriminatory. What he did was to go to the government and marketing boards were instituted, and the important thing to remember there is that the marketing board is not the instrument of the primary producer, it is an instrument of government. He has representation on the board, it is true, but so has the consumer, so has labour, in most cases, and his voice is only one among all the others. So, by no stretch of the imagination is he in control.

The CHAIRMAN: Are you going to get your question pretty quickly, Mr. Jutras?

Mr. JUTRAS: Yes.

*By Mr. Jutras:*

Q. In no way is he himself in control of the situation, as this infers, so that, frankly, there are no grounds whatsoever for this word "discriminatory" there, and I submit, respectfully, there is no parallel whatsoever between the two practices, and if I may say, furthermore I doubt very much if that represents the views of thousands of small retailers in rural Canada, those who know the situation well and who are familiar with it, because I think they realize they are the ones, or at least the first after the farmer, to benefit the most if that practice—

The CHAIRMAN: You are three minutes over now, Mr. Jutras. If that was your major question you should have asked it first instead of last.

Mr. BEAUDRY: On a point of order. I read it like this: "It is discriminatory to assume."

Mr. JUTRAS: On a point of order I want to submit here it is discriminatory and this same thing appeared in a great many of the briefs presented to us and I think it is about time it should be cleared up.

The WITNESS: I would like to clarify our attitude there. We are not critical in any way of any marketing procedure which the farmer or any other group in Canada may have set up. All we say is this, if that has served in his best interest for orderly marketing, then surely the devices that have been set up in the retail trade for orderly marketing should not be interfered with.

*By Mr. Shaw:*

Q. I would like to quote one sentence in the MacQuarrie Committee report, at page 17:

We have not centered our attention upon individual cases of maintained prices and their possible isolated consequences, because if the application of resale price maintenance were restricted to a limited number of goods, the problem thus involved would not deserve the government's consideration.

Would you like to comment on that?—A. May I look that up, Mr. Shaw?

Q. Yes, it is on page 17, paragraph 2, starting with the second sentence.—A. Yes, I would like to comment on that. I think that in effect what they say is



true that price maintenance is restricted to a limited number of goods and as I think I pointed out last week, of all the goods sold in the country the price maintained ones are not great, but it is of considerable importance in certain classifications of retailing.

Q. Would you agree that probably what the MacQuarrie Committee had in mind was if they were going to deal with the price maintained goods that the only way to be fair would be to take a broad field rather than a certain isolated case? Do you think it would be fair to take only a limited number of cases, or would you go over the whole field?—A. I would want to give that considerable thought. I would not start an investigation or make a report without having good sound factual evidence and how that would be found would take a great deal of thought.

Q. Would you agree probably the limited number of figures you brought before us today would not contribute too much towards the formation of opinion on price maintenance generally? You wouldn't ask me to make a decision on those?—A. Very decidedly not; it is merely indicative.

Q. My second question is, in the field of price maintained goods would you agree that retailers generally hold to that fixed price set down by the manufacturer?—A. Yes.

Q. In the field of non-price maintained goods would you say that the retailer holds fairly closely to the prices which he sets?—A. Well, he will hold exactly to the price he sets, but what price does he set?

Q. I would like to point out to you that all of us have had experience in dealing with merchants in our community. This is a very frequent happening, I go in the store and the merchant will say, "I will give you a dollar off that," or if I buy a \$50 order he will give me a pair of gloves.

The CHAIRMAN: That is not our experience.

Mr. SHAW: Maybe some of us are better customers than others.

*By Mr. Shaw:*

Q. Would you not agree since that is the general practice among small retailers in our smaller towns, that the statistical information you have given can hardly be accepted as factual in its application? It is true Eaton's won't give me anything, nor will any of the big stores. Therefore, would it be fair for me to take the figures you have given on non-price maintained and price maintained goods and say that is a fair basis of comparison?—A. I won't agree with you that we are still in the period of barter.

Q. Obviously you are not familiar with the practice of the small retailer because I think all members who have dealt with small retailers will agree that is exactly what occurs.

Mr. HEES: You are just trying to beat the poor fellow down.

Mr. SHAW: It is not beating anybody down. In spite of what the chairman has said, I would agree there is more truth than fiction in what you read a few minutes ago about private enterprise and the government. On the 23rd of November you asserted in effect if not actually that branded goods command a preferred position on the market; would that be fair?

The WITNESS: In certain classifications.

*By Mr. Shaw:*

Q. We will take those classifications. Would you agree this results from the brand name plus price?—A. I would agree.

Q. Which of those two would you put first?—A. The two together, they are inseparable. If the price is subject to wide fluctuation the consumer loses confidence in that item.

Q. You have used the expression "wide fluctuation," would the same apply in your view to a very narrow fluctuation in price?—A. Price maintained items generally do not fluctuate narrowly. By that I mean they tend to be more stable, there isn't day-to-day fluctuation in them.

Q. If the practice of resale price maintenance were prohibited and there resulted narrow fluctuation in prices, would you say the preferred position which branded goods now occupy would be adversely affected?—A. Yes, over the course of time.

Q. The effect you conclude would be the same as if the field of variation was narrow? If the price of the branded article, for instance sugar, goes down from 10 cents to 25 cents selling price, would you say its preferred position on the market had been adversely affected?—A. If it goes down throughout the whole country by that amount. Had there been any change in the cost of raw material or labour or are you stating the retailer has to reduce his margin or the manufacturer has to reduce his margin?

Q. The manufacturer maintains the quality of his product but the resale price has been reduced. Do you think that would affect the preferred position of that commodity on the market?—A. I do not think the retailer could continue to sell it because his margins are not that wide.

Q. Let us say the manufacturer reduces his price to the retailer.—A. Without any reduction in the quality of the item?

Q. Without any reduction in the quality would you say that the preferred position of that commodity on the market had been adversely affected?—A. No, I would not say so, but I doubt if he could keep up the quality of the product under those circumstances.

Q. Would you agree with me it would depend on the over-all profit recorded by the industry?—A. Yes, or by the particular firm.

Q. Is it a fact that even today you will occasionally find a retailer offering three shirts of a branded quality for a special price lower than what has been the prevailing price for the individual shirt?—A. Of a price maintained item?

Q. That is right.—A. That may happen, it depends on the manufacturer's policy. For instance, in shirts I believe there is a margin of 5 cents in which the price fluctuates, and it is traditional that some sell on the 95-cent, 98-cent or \$1 mark-up.

Q. Within the past few days it has come to my attention the manufacturer of a certain brand of shirt has authorized, and I am using the word advisedly, a special in which three shirts may be obtained for 50 cents less than the price of those shirts. Would you agree that has damaged the position of that commodity in relation to the preferred position which it previously occupied on the market?—A. No, not with that change in price.

Q. You are quite fearful of the effect that might result from reducing the price of a shirt, but actually it is being done today?—A. Yes, with the approval of the manufacturer, and I may say he probably has a very good reason.

Q. When you gave evidence on November 23 you indicated that purchases in many cases have to be made by the retailer well in advance and you quoted as an example summer clothing has to be purchased in February or March, and you said in effect the commodity was to be sold at a fixed price in the summer time to guarantee stability to the retailer. Would you say he has absolute assurance from the manufacturer that the price will not be changed?—A. No, I don't think anyone could make that guarantee.

Q. Then he is running a risk?—A. He is running a risk.

Q. Isn't it a fact today in the field of non-resale price maintained goods the retailer has to buy in advance?—A. Yes, but his risk is much greater and generally he will not buy as far ahead.

Q. You asserted there is not a wide fluctuation in the prices of non-maintained commodities, and using your own percentages of mark-up on non-



price maintained goods you indicated that there would not likely be a fluctuation in retail prices over a six-month period in these commodities?—A. It all depends on what six months you refer to. If you take the present six months there may be a surprising fluctuation.

*By Mrs. Fairclough:*

Q. First of all I would like to carry on along the line of Mr. Shaw's remarks and ask you if it is not true that in the retail trade, and I believe my authority for this is one of the executives of the R. H. Macy Company, that a reduction in price is not generally attractive to the purchasing public if it is less than about 20 per cent?—A. It again varies with the item, it would have to be 20 per cent or it is not attractive.

Q. It would have to be 20 per cent?—A. It takes a big reduction to pull them in.

Q. The other day when we heard Mr. Rands, in speaking at page 262 on a query from Mr. Thatcher, Mr. Rands made this statement that in food lines possibly 15 per cent of those lines were price maintained. I submit that Mr. Rands was away off the track there, and I think surely he must have made a mistake. The information which I have been able to gather would suggest that the actual price maintained lines are only about .066 and there are some suggested minimum resale prices which may possibly run as high as 10 per cent, but included even in this .066 are such items as tissues, cigarettes, chocolate bars and gum. Chocolate bars may possibly be construed as food, but certainly none of the rest.

The CHAIRMAN: Can you indicate where the figures came from?

Mrs. FAIRCLOUGH: I do not wish to name the store but it came from a big chain store.

*By Mrs. Fairclough:*

Q. Would you say that is correct, Mr. Harris?—A. Well, my knowledge of the food trade is not sufficiently great to make statements but I would say chain store figures are generally very reliable.

Q. Now, would you say in small food stores, what is known in the food trade as mom and pop stores they carry about 1,250 lines?—A. They carry a great multiplicity of lines.

Q. In the super markets they carry 2,700 lines. In all of these, even in the large stores, there are not many more than 50 lines that would be price maintained, and 15 per cent would run about 400 lines, so it looks as if there is a wide variation.

Would you not say that Mr. Rand was thinking of something else when he made the statement and making a wild guess?—A. I would be very glad to verify it with Mr. Rands.

Q. I am sorry he is not here because I am of the opinion he was not correct.

The CHAIRMAN: Are either of your associates in the food business, Mr. Harris?

The WITNESS: Neither of them are in the food business.

*By Mrs. Fairclough:*

Q. Inasmuch as we are not going to have an opportunity to ask questions apparently of the one dissenting member of your trade, I wonder if you would care to make some remarks on the brief which has been presented by the T. Eaton Company and which I believe you have seen?—A. I saw it in the daily press and I suppose it was the brief of the T. Eaton Company, and one



hesitates to comment or assume what the thinking of another retailer is. The T. Eaton Company is really the colossus of the retail trade in Canada and does many times the volume of business of any other retailer, I suppose.

Hon. Mr. GOLDING: Haven't you adopted a resolution here that people coming before us can only be questioned on their brief?

The CHAIRMAN: That is quite true; I stopped the Minister of Justice yesterday when he raised the same point.

Mrs. FAIRCLOUGH: That is true, but here is an entirely opposite view and we are not going to have an opportunity of going into it. They are a member of the Retail Federation and I would think on that score their brief may be considered supplementary to the one submitted to this committee by the Retail Federation.

The CHAIRMAN: I agree. After all, when Mr. Harris was here the last time I did read the wire saying they were dissenting from the brief. In other words, there were other opinions in the Retail Trade Federation and I do not know what knowledge Mr. Harris may have of the other brief.

Hon. Mr. GARSON: May I suggest that there is a device to which I could have resorted myself yesterday, but I thought I had better not set an example in that respect. Can you not put to the witness as your own proposition whatever extract from that brief you wish, and ask if he agrees with that?

Mrs. FAIRCLOUGH: I am not prepared to do that in the ten minutes, because I have other things I want to ask him.

The CHAIRMAN: The witness will understand he does not have to comment. Go ahead, as a matter of fact you have only three minutes left.

*By Mrs. Fairclough:*

Q. Mr. Harris, would you agree that in the retail trade as a whole there are wide variations in profit margins and that, for instance, you can scarcely compare the profit mark-up on cigarettes with that on refrigerators?—A. That is right.

Q. You cannot compare the mark-up on food with that on jewellery?—A. No.

Q. Therefore, would you say that one rule could scarcely be applied to all?—A. That is right.

Q. Well, then, in view of what has been said in the report of the MacQuarrie Commission, which has already been referred to, we have not centered our attention upon individual cases of maintained prices and very possibly isolated consequences—and this is the important part—because if the application of resale price maintenance were restricted to a limited number of goods the problem thus involved would not deserve the government's consideration?

Now, it would seem to me that is exactly opposite to what has been done. The number is not large. Therefore, along the line of your comments and taking the words of the report, it would scarcely merit the government's consideration?—A. Well, Mr. Chairman, as I have stated before, I think it is a disgraceful thing that a committee should bring in a report which generalizes so greatly and without any factual basis to support it, which might very conceivably put thousands of people out of business.

Q. And the very ones who are likely to be hurt most are the ones who are operating on the narrowest possible margin?—A. Yes.

Q. You would support that statement?—A. Yes.

Q. The high margin people are in the minority. They are fewer stores, fewer dealers, and they are not nearly as likely to be hurt as the great bulk of small retailers handling narrow margin goods. Is that correct?—A. Well, I agree if you confine that to fields where price maintenance is practised.

Hon. Mr. GARSON: Which is an important qualification.

The CHAIRMAN: This is your last question.

Mrs. FAIRCLOUGH: Well, I am willing to give my last question to the Senator so that he can follow on with the Eaton brief if he wishes to do so.

Hon. Mr. LAMBERT: I just want to refer to a question I asked the witness when he was here the last time. It is with respect to his figures that some 82 per cent of the volume of business done by members of his association represented those stores outside of chain stores and departmental stores. I think you said that departmental stores handled about 17 per cent?

The WITNESS: Senator, I was not referring to our membership. They were figures for the country as a whole. That 72 per cent is being done by independent stores.

The CHAIRMAN: 72 per cent?

The WITNESS: Yes.

*By Hon. Mr. Lambert:*

Q. Would you be willing to suggest that 72 per cent of the volume is done by firms or institutions or shops or stores entirely outside the range of departmental store and chain store?—A. Well, I think all business today is competitive—and classifications cannot be marked off that way.

Q. Let me put it another way. I think you said your membership represents about 40,000 dealers in this country?

Mr. BEAUDRY: One hundred—

*By Hon. Mr. Lambert:*

Q. Apparently a small percentage would be departmental stores and chain stores. Now, in connection with the price maintenance system am I at all right in assuming that it has developed as a form of voluntary co-operation between the manufacturer and the bulk or vast majority of those 40,000 people, the 40,000 institutions who are members of your association? Could it possibly be so described? I know you have said that the initiative has rested with the manufacturer, but there must have been very willing co-operation on the part of the retailers to develop this system as far as it has been developed now?—A. Mr. Chairman, I think the answer is that the overwhelming proportion of retailers are in favour of price maintenance. Therefore, they must like it—and therefore it is willing co-operation with the manufacturers.

The CHAIRMAN: Senator Lambert, just one point occurs to me. I have a list of speakers and I thought you were making one comment on a question. I fill the speakers list as soon as a quorum is established and I think that is an incentive for people to be here at 10.30. We have been remarkably successful in starting on time.

Hon. Mr. LAMBERT: I wanted to bring out the point on Eaton's and the department stores.

The CHAIRMAN: I will put your name down and you may take your turn if other people finish their questioning.

Hon. Mr. LAMBERT: It is all right.

The CHAIRMAN: Mr. Garson is next.

*By Hon. Mr. Garson:*

Q. Mr. Harris, you have repeated two or three times that your present submission is not conclusive but it is indicative—indicative of what?—A. Indicative of the fact that price maintained goods offer to the retailer generally a lower mark-up than non-price maintained goods.

Q. But not necessarily that the price of one article compares unfavourably or otherwise with the other?—A. You mean taking a shirt and a shirt? No.

Q. Yes?—A. I am talking purely about mark-up.

Q. I gathered from your remarks that in making this comparison, as between one price maintained article and one non-price maintained article, you tried to get them at the same price?—A. As close as possible.

Q. I put it to you, to get to this concrete case you have been speaking about, if you have two shirts that are worth \$2 and one is price maintained and the other is not price maintained, on the non-price maintained one there is a retail profit of 70 cents. That leads back to the manufacturer's cost to the retailer of \$1.30?—A. That is right.

Q. And in the other case if it is 60 cents it leads to \$1.40. The conclusion I am coming to, and I think it is implicit in your statement, is that even if the mark-up is higher in one case than the other it results in the same price to the consumer in the end—because you started off with the same price?—A. In your illustration you have started off at the same price.

Q. No, no.—A. You started at \$2 and worked back.

Q. But you told us in making this comparison in order to make sure you had shirts that were fairly comparable, you tried to get them at the same price?—A. Right.

Q. Is that not quite in accord with common sense, because one of the reasons the wholesaler has for charging more for the price maintained article is that it includes a lot of advertising?—A. It may or may not.

Q. Are those shirts you speak of not famous and well known goods that are advertised?—A. Yes, generally speaking but just take the advertising content of any item. Take the two shirts at \$2. One has no brand and it is not known to the public. The other is a famous brand which is well known to the public and is found acceptable. In order to sell those two shirts the advertising content or the advertising effort has to be put behind the non brand, the non-price maintained one, by the individual retailer—

Q. Oh, yes— —A. —becomes uneconomical compared to the other.

Q. I concede that, but would you not agree the reason the retailer has to put a lot of effort behind the non-brand article is because the manufacturer has not done so?—A. Obviously.

Q. But where the manufacturer has done so the retailer does not have to do so?—A. Yes.

Q. So you are submitting this morning to us a lot of truisms that we might have known before you started. Is that not right?—A. Well, I would not say that.

Q. Well, I want to deal with the example of your proposition that a brand is a mark of quality. Let me state one case that came up before us yesterday, the case of aspirin. We were told that in Canada for a product which was in every respect identical the non-resale price maintained article would sell to the public at 19 cents, but Bayer aspirin would sell in the same quantity at 79 cents.

Would you maintain that is an example of the integrity of the maker—that he would charge the public 79 cents for an article which they can obtain in exactly the same quality and quantity for 19 cents?—A. I am not familiar with the circumstances surrounding the marketing of Bayer's aspirin.

Q. You would not express an opinion on that?—A. I would prefer not to.

Q. Let us take another fairly well-known case. Do you sell soap in your store, by any chance?—A. Not soap of the laundry variety.

Q. I see that you anticipate my question.—A. Toilet soap.

Q. Well Proctor and Gamble manufacture a number of brands of soap do they not—Ivory soap for example?—A. Yes.



Q. Would you agree that is not price maintained?—A. Proctor and Gamble soap?

Q. Yes?—A. I do not know.

Q. Well, I will make the assertion and I am sure you will not contradict it? It is not price maintained.—A. It is not?

Q. No. Would you say that in the minds of the public at large Ivory soap is regarded with less respect we will say than—

The CHAIRMAN: Lifebuoy.

*By Hon. Mr. Garson:*

Q. No, another laundry soap like Sunlight?—A. Again I would not know. I think the housewives could answer better than I.

Q. I thought you came here as an expert in these matters you are testifying about?—A. I think it is too much to ask anyone to be an expert in all the classifications of the retailer.

Hon. Mr. HORNER: It is a slippery subject.

*By Hon. Mr. Garson:*

Q. All right. In that connection, Mr. Harris, is it not true that your statement requires just a slight modification to be completely accurate—you say that a brand, in the minds of the public, is a guarantee of quality? I think we can all agree with you in that; but I suggest it does not necessarily have to be associated with resale price maintenance?—A. A brand is an implied assurance of quality.

Q. All right, but you would agree that it does not necessarily have to be associated with resale price maintenance?—A. No, sir. I gave, if you will remember, instances last week of branded items which are not price maintained and I told what damaging experience they had gone through in the retail trade and how unsatisfactory they had proven to the retailer. I gave the instance of underwear, if you will remember.

Q. Well, I suppose you cannot comment on the instance of Proctor and Gamble's soap very well?—A. I cannot.

Q. They have, however, managed to obtain a large distribution on a satisfactory basis to the consumer over a long period of time have they not?—A. I presume so.

Q. That is all.

The CHAIRMAN: Mr. Hees?

Mr. HEES: I will give over my questioning time to let Mr. Harris continue answering the question that Mrs. Fairclough asked. It seems that there has not been time for an answer yet—I refer to Eaton's brief.

The CHAIRMAN: Repeat the question.

Mr. HEES: Well, Mr. Harris was halfway through.

The CHAIRMAN: Did you have any further comment?

The WITNESS: I have forgotten what the question was.

The CHAIRMAN: I have too. That is why I asked Mr. Hees whether he would repeat Mrs. Fairclough's question.

Mr. HEES: I think she asked him if he would like to comment on the Eaton brief with which I think we are all unfamiliar. Seeing that Eaton's are a member of his federation I thought it would be interesting for him to comment on that brief?

The WITNESS: Well, Mr. Chairman, perhaps it is not quite fair to the T. Eaton Company. It seems to me, and I would hope if it were possible, that the

T. Eaton Company should be called. It would be most interesting to find out why the largest company in Canada associates itself with the government in advocating the abolition of price maintenance.

The CHAIRMAN: I do not think the association is necessarily with the government, Mr. Harris. They have come out and submitted a brief voluntarily to this committee. The brief has been circulated and it is going to be printed. It is their considered opinion, for whatever value it may be for members of the committee in making up their minds. However, I think perhaps you are right in saying that you do not care to comment on another brief. That is your choice. We expect you, of course, to comment on your brief but you are quite within your rights with respect to the Eaton brief.

Mr. HEES: Well, that was all.

The CHAIRMAN: Mr. Harrison?

*By Mr. Harrison:*

Q. Mr. Harris, I would like to commence with the underlying principle of price maintenance, and following that line I would just like to suggest to you that of all the associations in Canada possibly you subscribe to a stronger degree to the principle of free enterprise? Am I right in saying that?—A. We certainly subscribe to the principle of free enterprise.

Q. Well, to follow that up, would you agree with me if I said the best possible freedom for the individual would be that where he has the greatest degree of freedom without treading on the toes of his neighbour. That is what we all desire in a free enterprise system—where the individual has the greatest latitude in his freedom without infringing the rights of other individuals?—A. Good for all—I would say.

Q. Well, in that case, would you say that price maintenance ran along that line—owing to the fact that a manufacturer suggest a retail price to a retailer? In other words, they agree amongst themselves that this price shall be maintained—without consultation with the buying public who are by far the majority. The buying public has no voice in that agreement and, in effect, their freedom is infringed upon?—A. I would definitely not agree with you, Mr. Harrison. The public is putting their voice into it every hour of the day. They have the all-powerful voice. They can accept or reject the product by buying it or not buying it.

Q. They have no voice in the original agreement that the price shall be maintained at such a figure?—A. I have never heard of any device that would make it possible to call in 13 million people to make a decision on price.

Q. My second line of questioning is this. As a former retail merchant I have a little insight into the workings of this matter and I was interested in some of the remarks you made earlier in your brief. You made the point, I think, in the figures you quoted, that goods of like quality were sold at the same price under price maintenance and under non price maintenance, and yet the profit mark-up on the non price maintenance articles was greater. Would that not suggest that the trend to lower mark-up on the price maintained goods shows, by the figures you indicated, that in the case of the price maintained lines the retailer is being squeezed? What would you have to say on that? Is he not being squeezed a little on the price maintained list if he sells them both at the same price and if they are comparable in quality?—A. The retailer is the man you are interested in.

Q. I am interested in the retailer in this instance.—A. I am speaking from the retailer's point of view. The retailer is interested in the over-all result of handling that product. He may have far lower mark-downs on it. He may have much more rapid rate of turnover. He may have, if you like, less soilage because it is packed in cellophane rather than in bulk. All those

factors go to decide which is the more profitable item to him. The price maintained article, generally speaking, is the faster selling, involves fewer mark-downs, and that tends to equalize.

Q. I am glad to have that explanation because without it your figures would go to prove my original idea that the retailer was being squeezed on the price maintained lines. Your figures by themselves indicate that?—A. Yes.

Q. I have a few questions here which were left for me by a member who was not able to attend this meeting. They concern the brief submitted by The T. Eaton Company, and some of them you may not wish to answer unless you care to do so. He wishes to know how many members are in the retail association. I think you said there were 40,000—A. I said that as closely as we could estimate, we have between 40,000 and 50,000 in the way of affiliates.

Q. And the second question is: how many members support the minority opinion expressed in The T. Eaton Company telegram?—A. We have never ascertained that; but in our questionnaire, the proportion was overwhelmingly in favour of price maintenance.

Q. And the third question is one which I do not suppose you would care to answer. It follows very much along the line of Mr. Hees and Mrs. Fairclough, and I wonder if you would care to elaborate on the opinion expressed by The T. Eaton Company. But I would assume that you would not care to answer it.—A. I would love to, but I won't.

Mrs. FAIRCLOUGH: Remarkable restraint!

*By Mr. Harrison:*

Q. Do you think that if the practice of resale price maintenance was abolished that The T. Eaton Company and others would reduce their mark-ups on those items?—A. You cannot attach it to any particular company, Mr. Chairman.

The CHAIRMAN: That would be a fair way.

The WITNESS: Let us assume that there is a big and powerful company, and then let us narrow it down to one community, and let us again take the example of shirts; let us stick to shirts. It will take shirts and mark them at half price and bring a tremendous number of people flowing into its store. Now it is probably developing its own private brand as well, and it is in its interests to destroy the other brand in favour of its own brand.

*By Mr. Harrison:*

Q. It may be the same thing.—A. So, by price cutting it can destroy the other brand and destroy its distribution in that particular community.

Q. Is it not a fact that T. Eatons put out their own brand in many instances? No doubt they are exactly the same thing as those which are put out under the well known name brands which are advertised on a country-wide basis.—A. I could not answer that.

Mr. HARRISON: Thank you.

The CHAIRMAN: Now, Mr. Thatcher.

*By Mr. Thatcher:*

Q. I wonder if Mr. Harris could say if he knows the names of any other retailers in his association who are opposed to that principle as well as The T. Eaton Company?—A. I do not.

Q. You think every retailer in your organization goes along with your brief?—A. No. I do not think I said that. I think I said very clearly last week that there are a number who are not in favour of price maintenance, but that the overwhelming majority is.



Q. You cannot name any others specifically this morning?—A. You mean, who are not?

Q. Yes; and if you have not got the information readily available, it is all right.—A. We have it readily available, yes. Mr. Chairman, these retailers have agreed that their names might be used in opposition to the principle.

Q. Yes. You mean in opposition to your brief?—A. No, I mean in opposition to the principle of resale price maintenance; and in order to make it entirely clear, this is the wire which was set out:

Federation representatives to appear again this Friday before joint committee on combines legislation. We wish to advise committee at that time names of member-companies who oppose resale price maintenance practice. May we have your authorization to include name of your organization. Immediate reply requested.

And these are the people who replied: Mr. N. A. Gowdy of Kitchener, Ontario; The Henry Morgan and Co. Limited, Montreal; Murphy-Gamble Limited, Ottawa; Calp's of Saint John, N.B.; Johnstone Walker Limited, Edmonton; and C. J. Eames and Son, Limited, Hamilton, Ontario.

Q. I expect there would be a number of them which are departmental stores. What is the nature of Gowdy's business?—A. It is a general department store?

Q. And what about Calp's?

Mr. STUART: Calp's is a clothing store in Saint John, gentlemen's and ladies' wear.

Mr. THATCHER: And what about Johnstone Walker Limited?

The WITNESS: They are in Edmonton. Perhaps Mr. Shaw would know about them.

Mr. SHAW: I have no idea, Mr. Chairman.

The WITNESS: It is a small department store.

Mr. THATCHER: So the majority of your protests have come from department stores?

The WITNESS: Yes.

Mr. THATCHER: And large ones too, in most cases?

The WITNESS: Yes.

Hon. Mr. BEAUBIEN (*Co-chairman*): Did you send that request to all the retail merchants in your association?

The WITNESS: No. We sent it to those who had said that they were against price maintenance; and these are the ones who replied, saying that we might use their names.

Hon. Mr. BEAUBIEN (*Co-chairman*): And were there others who did not reply?

Mr. THATCHER: I have only got 10 minutes, Mr. Chairman.

The CHAIRMAN: I will give you a minute on this, Mr. Thatcher. Perhaps Mr. Harris would clarify the method by which they got in touch with these people, and state as well whether there are people who are opposed to the principle of resale price maintenance but who did not want their names to be used.

The WITNESS: Yes, there are, and they are two in number.

Mr. HARRISON: How many telegrams did Mr. Harris send out altogether?

Mr. THATCHER: This is time out, I take it, Mr. Chairman?

The CHAIRMAN: Yes, this is time out.

The WITNESS: Eight.

The CHAIRMAN: You say that eight wires were sent out?

The WITNESS: Yes.

The CHAIRMAN: And the names of those who said that their names might be used were read out, and besides them there were two others opposed, who did not want their names to be used.

Hon. Mr. BEAUBIEN (*Co-chairman*): I would like to have that clarified in my own mind. Did you send that telegram to every retailer affiliated with your association?

The WITNESS: No sir, we could not send telegrams to everyone across Canada. The best we could do with this was to send it to those who in reply to the questionnaire already sent out, had said that they were opposed. We asked our affiliates: "Is your membership opposed or in favour of it?"

The CHAIRMAN: You have two minutes added on your time, Mr. Thatcher.

*By Mr. Thatcher:*

Q. I think the names of the companies which Mr. Harris has just given us are significant because they indicate to us that as far as the retail trade is concerned the companies which are most anxious to have this practice abolished are the very large department stores throughout the country. That is not always the case, but it is indicated. I think that is the wording which Mr. Harris used earlier. So I think we are indebted to Mr. Harris for putting before us this morning the first hard figure which has been put before this committee in regard to the practice of resale price maintenance and I very respectfully suggest to the minister that one of the duties of the combines department should be, if they have got figures that are contrary to these, is to lay that information before the committee so that we can have it. I think Mr. Harris has stated quite freely that they are not necessarily all important figures, but that they do show that in respect to these particular items the mark-ups on price maintained goods are actually lower than in the case of non-price maintained goods in those various departments. Now, the first thing I would like to ask Mr. Harris, and I would like to get these actual figures: If the government brings in this bill and it passes, what do you think will happen to the prices on the price maintained goods that you have listed here. Do you think they will go down from heavy competition or, on the other hand, would they be likely to go up where the mark-ups were roughly similar to the mark-ups on non price maintained goods?—A. Mr. Chairman, there is an economic mark-up below which no particular store can go or it goes out of business. It can afford to cut those prices, to cut below that mark-up for a limited period of time in order to draw traffic, to swell its traffic, but it cannot do that over an extended period of time. Now, if price maintenance is removed, what I believe will happen is this, that certain retailers will take the most popular, best known, price maintained articles, and they will slash the prices of them and they will try and keep them slashed until the small retailer no longer finds it profitable to carry them. But they cannot keep that up forever. After the distribution has been spoiled in a centre, and if—I have no doubt—people have been damaged and damaged badly, then the price has to go up again.

Q. So you say there might be temporary price decreases and then probably mark-ups would go up higher again?—A. As I pointed out last Friday, the average retailer profit runs around 2.9 per cent, and there is not just that much in there to be squeezed out over an extended period of time.

Q. Could you tell me today are these price maintained goods rigidly kept at those prices, or is there a certain fluctuation allowed. For instance, it occurs to me that before the war in the automobile industry when a certain model was out of date the dealers were allowed to cut prices, or at the end of

the radio season prices could be cut on radios. Is that still the practice?—A. Yes, that is still the practice. It applies in soft goods as well. Generally speaking, twice a year it is an open game to cut your prices and clear your stocks.

Q. Merchants are not in all cases precluded from cutting even price maintained goods?—A. No.

Q. One of the main arguments against this practice has been that it does stifle competition. Can you take any of these lines that you have taken today, for instance, men's shirts. Would you say that resale price maintenance has done away with competition on shirts?—A. Quite the reverse. I think the competition on shirts is keener than it ever was. There are three or four particularly well known brands of shirts, and they are fighting it out with each other the whole time.

Q. Would you not agree with Mr. MacQuarrie when he says that the practice restricts competition?—A. No, I would not agree with him.

Hon. Mr. GARSON: What he said was that it restricted competition in prices, which is a very different thing from restricting competition.

Mr. THATCHER: I accept the correction. Would you care to change your answer, Mr. Harris?

The WITNESS: No, and if I may answer the minister on that point, there is nothing to restrict those four manufacturers competing with each other in price, and they do.

*By Mr. Thatcher:*

Q. Is there any particular line here, Mr. Harris, that you have listed where there is no violent competition?—A. There is strong competition in every line.

Q. Then you would say the observation Mr. MacQuarrie made was more academic than practical?—A. I would say it was extremely academic.

The CHAIRMAN: Are you through, Mr. Thatcher? Thank you. Mr. Beaudry.

Mr. BEAUDRY: I have a slight case of conscience. In questioning Mr. Harris, the Minister of Justice, discussing a theoretical case of two shirts up for resale at a theoretical cost of \$2, costing, in the case of the non price maintained shirt, \$1.30 to the retailer, and costing the retailer \$1.40 in the case of the price maintained shirt. The minister made the statement that one of these two shirts, to wit, the one costing the retailer \$1.40 included in its cost to the manufacturer what he termed a lot of advertising. I submit there has been no evidence introduced on the subject of advertising, and as a member of that profession I am embarrassed a bit that the question is brought up. I would like the minister to tell me, if I may, what he meant by a lot of advertising, because we have brought in no expert witnesses on that subject, and whereas I would hate to qualify as an expert on the subject, but I would certainly like to bring in some facts, so I wonder if Mr. Garson would determine more closely what he meant by a lot of advertising—a lot of advertising in total volume or a lot of advertising in that specific case?

Hon. Mr. GARSON: Mr. Chairman, it is a long while since I have had such a delicate compliment paid to me as to have an eminent advertising man like Mr. Beaudry ask me for expert advice on publicity.

Mr. BEAUDRY: I did not, sir.

Hon. Mr. GARSON: But I had understood from the evidence given by the witness today, and on previous occasions, that brand is the guarantee of quality, and that the selling of branded merchandise involves the putting of the quality into the merchandise and then bringing the quality to the attention of the public by advertising, and that that advertising would be done by the manufacturer. That was the basis of my reply.



Mr. BEAUDRY: Yes, but you said a lot of advertising. For the sake of the record, may I state from my own practical experience what I know about what is called a lot of advertising. I have been in the business a good number of years and I would state very generally that advertising appropriations constitute in the main from  $\frac{1}{2}$  of 1 per cent to 2 per cent of the sales volume of a manufacturer and I do not know whether that can be termed as a lot of advertising. It may be in volume, but it is hardly a factor in the retailer's margin or the price to the consumer.

Hon. Mr. GARSON: If on the basis of these observations I might ask a question of the witness, I would like to know why the wholesaler charges more money to the retailer on that branded line if he hasn't had to pay out more money to promote it.

The WITNESS: I cannot answer that for every manufacturer in the country. I would say the value is there.

Hon. Mr. GARSON: Then perhaps Mr. Beaudry can tell us why?

Mr. BEAUDRY: I assumed the practice of questioning members was to be frowned upon.

The CHAIRMAN: Mr. Beaudry, you are the one who started questioning another committee member.

Mr. BEAUDRY: I had a very special case there I was personally interested.

Hon. Mr. GARSON: I waive my question.

*By Mr. Beaudry:*

Q. In answer to one question I think you stated that you could not determine the acceptance of one brand of soap on which prices are not maintained as against another brand on which prices are maintained because you qualified yourself as not being an expert in that field. Addressing you as a householder, are you familiar with the practice of soap manufacturers where there is no resale price maintenance distributing coupons to the householders valued at up to 10 or 12 cents a coupon, and also distributing premiums?—A. Yes, and may I say this, that I have heard it said in the retail circle that some soap manufacturers are failing to maintain the price, and by using these devices to which you refer, have given the retailer practically nothing whatsoever, and he is finding it a loss item to sell because of the manufacturers not maintaining the price.

Q. May I conclude from that this becomes a device for inflicting one's goods upon the consumer?—A. I won't answer that question.

Q. Mr. Shaw in questioning you brought out the fact, and I think he gave a specific example of shirts, that in his experience at times three shirts of a price maintained nature were resold as a group of three at I think a figure of 50 cents less.

Mr. SHAW: I did not give it as a specific figure.

*By Mr. Beaudry:*

Q. It was an example and I use it as such. I think you said yes that it had happened. Is it not true then that the granting of a reduction in price against a greater volume of business is still a feature of price maintenance, and therefore price maintenance does not work exclusively against price reductions by assent between manufacturers and retailers?—A. Yes.

The CHAIRMAN: Mr. Harris reminds me he was asked last time by Mr. Shaw to produce a letter they sent out to their members and he would like to read that into the record now.

The WITNESS: It was suggested at that time perhaps undue pressure had been brought on our members to make representations to their members of parliament that they were in favour of resale price maintenance. With your permission I would like to read the bulletin that went out under date of 19th of October, which is headed, "Summary of Interim Report on Re-sale Price Maintenance."

A recent Federation bulletin (Vol. 11: No. 46, dated Oct. 11th) commented on the fact that the Government intends to bring before Parliament, during this session, legislation designed to prohibit the maintenance of re-sale prices by manufacturers.

The proposed legislation is not yet available but the interim report made to the Minister of Justice by the MacQuarrie Committee has now been made public. It is upon the recommendations contained in that report that the Government has been asked to consider legislation. The chief points of the Committee's report are summarized here for the information of Federation members.

The Committee defines re-sale price maintenance as "the practice designed to ensure that a particular article shall not be resold by retailers, wholesalers or other distributors at less than the price prescribed by the suppliers—that is, in most cases, the manufacturers." Measures to enforce the prescribed price may take different forms, such as warnings, fines, the denial of supplies, and withdrawal of discounts.

In commenting on the extent of re-sale price maintenance the Committee, while indicating no estimates, were satisfied that the practice of fixing re-sale prices is widespread and that it covers whole classes of goods. It added that it was of significant and growing proportions. (The Federation stated in their submission to the MacQuarrie Committee that, in the absence of an exhaustive statistical investigation, it would be their opinion that the percentage of retail business done in Canada under suggested re-sale prices is not a factor in the cost-of-living index.)

The Committee received a great many submissions which revealed divergent opinions on the subject. In general the associations representing manufacturers, wholesalers and retailers were in favour of price maintenance, while labour unions, co-operatives, farmers' and consumers' associations were opposed to the practice. The arguments in favour of and against price maintenance were given in the report.

The general conclusion and recommendations of the Committee were summed up in these words:

The Committee has studied re-sale price maintenance in the light of the two standards of judgement originally set up, namely the desirability of a free economy and the need for economic efficiency. This study has led the Committee to the general conclusion that re-sale price maintenance, on the growing scale now practiced, is not justified by either of these standards. It represents a real and undesirable restriction on competition by private agreement or 'law' and its general tendency is to discourage economic efficiency. That is why, in our opinion, the prescription and the enforcement of minimum re-sale prices must be viewed as manifestations of a restrictive or monopolistic practice which does not promote general welfare.

The Committee, therefore, recommends that it should be made an offence for a manufacturer or other supplier:

1. To recommend or prescribe minimum re-sale prices for his products;
2. To refuse to sell, to withdraw a franchise or to take any other form of action as a means of enforcing minimum re-sale prices.

It is to be noted that the Committee does not recommend that it be made an offence to prescribe and enforce re-sale prices which



are not minimum. It follows that suppliers would be free to suggest and enforce maximum re-sale prices. It should not be overlooked that the fixing of a specific re-sale price unavoidably involves the fixing of a minimum price.

It has been observed in the press that there has been a suggestion that the Bill, when announced, should be referred to a committee of the House, where retailers and others could make representations. It would, therefore, be quite possible that, should there be strong pressure on Government Members concerning the legislation, the Bill might go to a special committee. In this even, the question of its passage not taking place this session is raised.

Until copies of the Bill are available for study, intelligent comment on the proposed legislation cannot be made. We would urge, however, that those members who strongly oppose the proposed legislation write to their Members of Parliament indicating that the Bill be referred to a special committee of the House, where retailers and other organizations would have the opportunity of expressing their views. I submit, Mr. Chairman, that this is a very dignified and very fair presentation.

The CHAIRMAN: I think the whole committee will agree with that.

Mr. SHAW: As one who requested that information I am grateful and I would agree with Mr. Harris. It is too bad that all others did not send such dignified letters.

The CHAIRMAN: Mr. Stuart?

*By Mr. Stuart:*

Q. Mr. Harris, during Mr. Beaudry's questioning he mentioned the fact that there were on many lines, because they were not price maintained, coupons and the like handed out as inducements for people to purchase a certain article. Would you know of any manufacturers of price maintained articles who advertise over the radio to a great extent in quiz programs and the like, offering thousands of dollars to the people who buy their articles?—A. I am not trying to be facetious—

Q. Yes?—A. I look at television now. I cannot say I have heard the radio for some years.

Q. I think I would like to put this on the record from my own experience.—A. Yes.

Q. There are many manufacturers of price maintained articles in this country who have fabulous programs that go from east to west on the North American continent—not only in Canada but in the United States. They offer fabulous sums and I have seen them built up to two or three or four thousand dollars with 75 different articles—pianos and so on all down the line—as prizes. Would that not be pretty much the same as the offering of coupons in a store by a manufacturer who did not have the protection of price maintenance?—A. Well, Mr. Beaudry can answer that in a much more expert fashion than I can.

Mr. BEAUDRY: I would like to say that there are also many others who do not sell price maintained goods who use the same practice.

Mr. STUART: There has been evidence, and it has been suggested by many in this committee, I think in all sincerity, that legislation such as this if put into effect might put out of business veterans who have established businesses since the war. That has been said and it has a certain effect with all of us because we do not want to see that. However, in looking over the matter I find that Mrs. Fairclough put on the record today this figure—only  $\frac{2}{3}$  of 1 per cent of the commodities that are distributed in food stores, in grocery stores, are price maintained.



Mrs. FAIRCLOUGH: .066.

Mr. STUART: That would be  $\frac{2}{3}$  of 1 per cent.

Hon. Mr. GARSON: No, much less than that.

Mr. STUART: Well that makes it so much the better.

Mr. BEAUDRY: In a chain store.

*By Mr. Stuart:*

Q. I have only a few minutes left and I would like to ask the witness questions. I do not know whether you can answer or not but do you have any idea of the number of retailers in Canada, that is in percentage, who would be in the grocery trade? Would you or any of your associates have any idea?—A. I do not know.

Q. Well it seems to me there must be thousands of them in Canada. I think the greater part of the retail trade would be in groceries. There is less than 1 per cent of what they are selling that is price maintained.

Mr. BEAUDRY: I object to that statement.

Mr. STUART: Just a moment.

Mr. BEAUDRY: On a point of order, Mr. Thatcher.

Mr. STUART: These are my figures.

Mr. BEAUDRY: But you are quoting Mrs. Fairclough whose figures came out of one chain store.

Mr. STUART: If it will assist Mr. Beaudry I will put it this way. A very small percentage of the articles they sell are price maintained and, with all of these thousands of stores across the country, I do not hear of many failures—and there is the maximum of competition in that business. That would indicate that competition is not putting the little businessman out of business?

Mr. BEAUDRY: With all due respect I insist on raising this point of order. We have on the record a figure given by a gentleman—I forget his name—Mr. Rands—stating that in his opinion, and as far as he is concerned, the proportion of price maintained goods sold in grocery stores is 15 per cent. We have had one of the members of the committee submit figures from one source which has not been disclosed—it was qualified as being one chain store.

Therefore, I do not think it is fair to preclude from the witness the original set of figures, and allow a member of the committee to ask the witness to answer on figures from one chain store—one particular set of figures.

The CHAIRMAN: I must say you are unduly sensitive, Mr. Beaudry, in view of the questions you have asked and in view of some of the statistics you have brought forward.

Mr. BEAUDRY: I am asking for a ruling on the point of order.

The CHAIRMAN: Mrs. Fairclough brought forward two points—that the figure was .066 for chain stores, and if you listened to her, she said in other stores it might be a little more, but it was a very small percentage. That is the point which Mr. Stuart is making.

Mrs. FAIRCLOUGH: I drew a comparison between strictly maintained and enforced prices and suggested resale prices.

*By Mr. Stuart:*

Q. I will leave that as it is. But I was downtown this morning on Sparks Street and I noticed in a clothing store that B.V.D. shirts, which are highly advertised across Canada—first quality price was \$4.95—today, pre-Korean prices, \$3.95. Would that be a loss leader or just how can you describe the action of that retailer?—A. My colleague, who is in the men's wear trade, says that B.V.D. have reduced their prices.

Q. Well, would that be generally?—A. Right across the country.

Q. Each and every retailer who sells B.V.D. shirts can advertise at that price?—A. May I just say that you asked a question which I have not had the opportunity of answering. Your question was how many failures did I think there were in the grocery trade. The answer to that is: "I do not know, but a lot. I think it is one of the most prolific sources of failure in any classification of retailing.

*By Hon. Mr. Garson:*

Q. What is "a lot"? We can get the figures?—A. The figures are available.

Q. Yes, they are available, and, in view of the fact that they are available, would you not want to slightly modify the term "a lot"?—A. I modified it by saying "greater than any other classification of retailing."

*By Mr. Stuart:*

Q. On page 2 of your brief, point number 3, you have a group of items that are listed there. You say: "Minimum resale prices also tend to become maximum prices."

Would you elaborate on that, because I guess I am a little dense and I just do not understand it?—A. Yes. Again, I will go back to the shirt instance that Mr. Garson brought forward—the \$2 shirt.

Q. Yes?—A. The retailer is told that he may not sell that for less than \$2. This statement says that tends to become the maximum price—that quite irrespective of mark-up the retailer does not try to sell it for \$2.25 or \$2.50—but with a non-price maintained shirt he will try to get as much as he can because there is no basis of comparison with the other at all.

Mr. SHAW: Just on a point of order, where can I buy one of those \$2 shirts?

The WITNESS: May I suggest you get it from your friend that you were telling me about.

Some Hon. MEMBERS: Hear, hear.

The CHAIRMAN: A pair of gloves too.

This will be your last question.

*By Mr. Stuart:*

Q. In the list you have presented here today—I want to thank you for it because it has been helpful to the committee—I notice that under "shoes" you quote nine items on which your percentage of mark-up is about 36 per cent.

I have here a price list of the L. H. Packard Company of Montreal, and this is called "Fall 1951 List". Just looking at nine items on that list I find that each and every one is over 40 per cent. Then I pick up a list here of the Savage Shoe Company of Preston, Ontario, and the first five of them—I just took the first five—are a little over 41 per cent.—A. Are you taking it on selling or cost?

Q. I am taking it on selling price?—A. Is tax included in that?

Q. Yes, it gives you the prices—here they are?—A. Sales tax would be extra, f.o.b. Preston; so you must add 10 per cent for sales tax on that, and also add the transportation charge in order to get a proper mark-up figure.

Q. The tax would not be included in those figures?—A. No, and neither is the transportation.

The CHAIRMAN: On your figures tax and transportation were not included. Our heading is "laid down price". Thank you, Mr. Harris.

Mrs. FAIRCLOUGH: Could I make just one statement, Mr. Chairman, for the record?

The CHAIRMAN: Yes, certainly, Mrs. Fairclough.

Mrs. FAIRCLOUGH: In the question and the statement which has just been made it was said that the large stores are opposed. I think it should be placed on the record that all large stores are not opposed, because there are a good many, I know, which believe in resale price maintenance.

The CHAIRMAN: And equally all the stores which are opposed are not large stores.

Mrs. FAIRCLOUGH: No.

The CHAIRMAN: Thank you.

The meeting adjourned.



## APPENDIX "A"

Item	Price Maintained % Mark-Up on Selling Price	Non Price Maintained % Mark-Up on Selling Price
Men's Cardigan Sweater Coat.....	36·1	
" " " " .....		39·2
" Topcoat.....	33·8	
" " " " .....		36·6
Women's Hosiery Nylon 60 Gauge 15 Denier.....	37·5	
" " " 51 " 15 " .....	37·1	
" " " 51 " 30 " .....	39·9	
" " " 45 " 30 " .....	37·8	
" " " 42 " 30 " .....	38·6	
" " " 60 " 15 " .....		42·3
" " " 51 " 15 " .....		47·1
" " " 51 " 30 " .....		44·2
" " " 45 " 30 " .....		43·5
" " " 42 " 30 " .....		40·5
" " " 60 " 15 " .....	38·6	
" " " 60 " 15 " .....		40·6
" " " 51 " 15 " .....	37·1	
" " " 51 " 30 " .....	39·9	
" " " 51 " 30 " .....		43·5
" " " 45 " 30 " .....	36·6	
" " " 45 " 30 " .....		40·4
" " " 45 " 30 " .....	38·8	
" " " 45 " 30 " .....		41·7
" " " 45 " 40 " .....	38·7	
" " " 45 " 40 " .....		41·7
" " " 42 " 40 " .....	38·6	
" " " 42 " 40 " .....		40·9
Ladies Slips.....	36·2	
" " " " .....	36·6	
" " " " .....	37·9	
" " " " .....	37·9	
" " " " .....		35·1
" " " " .....		38·3
Ladies Panties.....	37·1	
" " " " .....		28·2
Junior Girls Vests.....	35·0 Average	
" " Brief.....	35·0 for Dept. 35·5	
Curity Diapers.....	Average 24·0 mark-up	
Infants Vest.....	35·0 for Dept.	
Infants brief.....	35·0 38·6	
Bedspreads (Homespun).....	33·0	
" (Chenille).....		41·0
" (Homespun).....	34·0	
" (Chenille).....		39·0

NOTE.—These bedspreads are not exactly comparable items, but may indicate comparison of mark-ups for this type of merchandise.

Item	Price Maintained % Mark-Up on Selling Price	Non Price Maintained % Mark-Up on Selling Price
Men's Rubber Commuter Boot.....	33.2	
Knee-length Rubber Boot.....		29.9
Men's Scamper Shoe.....	34.2	
" " ".....		36.5
Childrens Shoes.....	36.7	
" " ".....	36.0	
" " ".....	36.5	
" " ".....	36.3	
" " ".....	36.8	
" " ".....	36.5	
" " ".....	36.8	
" " ".....		34.6
" " ".....		35.6
" " ".....		35.6
Women's Winterboot.....	29.0	
Wisp de Luxe Boot.....	36.0	
Velvet Zipper.....	32.0	
Tartan Rubber.....	37.0	
Foothold ".....	36.0	
Shaving Cream.....	34.0	
" " ".....		45.5
Tooth Paste.....	34.1	
" " ".....		41.7
Men's Shirts.....	34.3	
" " ".....	33.3	
" " ".....	34.3	
" " ".....	36.7	
" " ".....		37.5
" " ".....		36.1
" " ".....		39.7
Mens Hosiery.....	33.0	
" " ".....		35.0
" " ".....	33.0	
" " ".....		33.0
" " ".....	33.0	
" " ".....		33.0
Spun Nylon Half Hose.....	38.3	
Sheer Nylon.....	36.4	
Model Hosiery.....		39.7
Circle Bar (Wool Sole).....		39.1
Sleeveless Jersey-Men's Underwear.....	41.0	
" " " ".....		40.3
Blankets.....	32.1	
" " ".....	34.1	
" " ".....	33.8	
" (Baby).....	34.0	
" ".....	30.0	
" ".....	35.3	
Motor Rugs.....		37.5
" " ".....		36.0

Item	Price Maintained % Mark-Up on Selling Price	Non Price Maintained % Mark-Up on Selling Price
24" Tricycles.....	27.3	
Wagons.....	25.3	
Kiddie Cars.....	27.4	Average
Toy Train Transformers.....	30.6	Mark-Up
Toy Trains.....	37.2	for Toy
Meccano Sets.....	32.7	Dept.
" Dinky Toys, Trucks etc.....	32.5	37.0
Record Player (Childs).....	30.0	
Bicycle.....	31.6	
Outboard Motors.....	30.0	Average
Bowling Balls.....	20.7	Mark-Up
Golf Balls.....	33.3	for
Bicycles.....	30.2	sporting
Skates.....	32.6	goods
Coats.....	30.7	Dept.
Golf Balls.....	33.3	34.3



## APPENDIX "B"

STOCK LINES INFANTS, CHILDS AND MISSES GOODYEAR WELT BOOTS AND SHOES AND CEMENT STRAPS

Sample	Color	Style	Description	Size	Width	Last	Price	Sug- gested Resale
							\$ cts.	\$ cts.
1110	Brown	PACKWELT	BABIES RANGE	2-5	D	260	2.95	4.95
1111	White							
2110	Brown	PACKWELT	INFANTS RANGE	5½-8	BCE	260	3.35	5.75
2111	White							
2143	Brown	PLAYMATE	Elk Boot, Plain Toe, Oak Sole, Club Heel.	"	"	260	3.80	6.50
2410	Brown	PACKWELT						
2436	White		Elk Oxford, Retan Sole, Spring Heel.	5-8	BCD	42	3.20	5.50
2209	Patent	FLEXPACK	Buckle Centre Strap, Cemented Leather Sole, Spring Heel.					
2220	White		(Colors made to order)					
3143	Brown	PLAYMATE	CHILDS RANGE	8½-12	ABCD	360	4.25	7.25
3144	Brown	PLAYMATE						
3146	White	PLAYMATE						
3163	Brown	PLAYMATE						
3164	Brown	PLAYMATE						
3209	Black	PLAYMATE						
3220	White	FLEXPACK	(Boots are made to order only). Centre Strap Buckle, Cemented Leather Sole, Club Heel.	"	"	42	3.60	5.95
			(Colors made to order).					
3443	Brown	PLAYMATE	CHILDS RANGE	8½-12	ABCD	360	3.90	6.75
3444	Brown	PLAYMATE						
3463	Brown	PLAYMATE						
3464	Brown	PLAYMATE						
3474	White	PLAYMATE						
3488	Black	PLAYMATE						
3489	Black	PLAYMATE	Elk Oxford, Plain Toe, Oak Sole and Semi Thomas Heel.	"	"	360	3.90	6.75

	MISSES RANGE			
	FLEXPACK	Centre Strap Buckle, Cemented Leather Sole, Club Heel.....	12½-3	ABCD
		(Colors made to order).		
Patent	PLAYMATE	Elk Oxford, Imit. St. Tip, Oak Sole, Semi Thomas Rubber Heel.....	"	"
White	PLAYMATE	Elk Oxford, Wing Tip, Oak Sole, Semi Thomas Rubber Heel.....	"	"
4200	PLAYMATE	Elk Oxford, Imit. St. Tip, Neolite Sole, Semi Thomas Rubber Heel....	"	"
4220	PLAYMATE	Elk Oxford, Wing Tip, Neolite Sole, Semi Thomas Rubber Heel.....	"	"
4443	PLAYMATE	Elk Oxford, Wing Tip, Oak Sole and Semi Thomas Heel.....	"	"
4444	PLAYMATE	Elk Oxford, Imit. St. Tip, Oak Sole and Semi Thomas Heel.....	"	"
4463	PLAYMATE	Elk Oxford, Wing Tip, Oak Sole and Semi Thomas Heel.....	"	"
4464	PLAYMATE	Elk Oxford, Imit. St. Tip, Oak Sole and Semi Thomas Heel.....	"	"
4488	PLAYMATE	Elk Oxford, Wing Tip, Oak Sole and Semi Thomas Heel.....	"	"
4489	PLAYMATE	Elk Oxford, Imit. St. Tip, Oak Sole and Semi Thomas Heel.....	"	"

## PRICE LIST

Prices Subject to Change Witout Notice

In Stock:—SHOES and SLIPPERS

Fall — 1951

L. H. PACKARD &amp; CO. LIMITED

4320 Boyce Street, Montreal 4, P.Q.

Terms: Net 30 Days

IN STOCK LINES OF MEN'S AND WOMEN'S SOFT SOLES AND  
MEN'S HARD SOLE SLIPPERS

Sample	Description	Width	Size Range	Price	Sug- gested Resale
WOMEN'S SOFT SOLES					
				\$ cts.	\$ cts.
34	Womens Kip Dorsay, Wood heel Black, Wine and Blue.....	Nar.	4-11	2.50	4.25
3023	Womens Kip Wedge Black, Wine and Blue.....	Med.	3-11		
		Nar.	4-11	2.95	4.95
		Med.	3-11		
3359	Womens Kip Boudoir, Rubber heel, Felt lining, Black only.....	Med.	3-10	2.35	3.95
3381	Womens Kip Boudoir, Wood heel, Felt lining, Black and Patent only.....	Med.	3-10	2.65	4.50
3386	Womens Kip Bridge, Wood heel Black, Wine, Blue and Patent.....	Nar.	4-11	2.80	4.75
		Med.			
3005	Womens Black Quilted Satin Boudoir, Padded heel, Pink, Wine and Blue Satin to order.....	Med.	3-10	2.10	3.50
1103	Childs Black Gym Slipper.....	—	5½-10	1.50	
2202	Misses Black Gym Slipper.....	—	11-2	1.65	
3397	Growing Girls Black Gym Slipper.....	—	3-9	1.85	
	White Gym Slippers made to order only.				
MEN'S SOFT SOLES					
411	Youths Kip Opera, Felt Lining Padded heel.....	D	11-13	2.20	3.75
411	Boys Kip Opera, Felt Lining, Padded heel.....	D	1-5	2.40	3.95
	These two lines in Wine and Brown, full sizes only.				
532	Men's Felt Lined Opera, Padded Heel. Colours: Brown, Wine, Blue and Black.....	E	5½-14	2.90	4.95
5309	Men's Kip Opera, Satin Lining, padded heel. Colours: Brown, Wine, Blue and Black.....	D	5½-14	3.10	5.25
	"E" Width in this style is made to order.				
5547	Men's Kip Zipper Romeo, Felt lining, Padded Heel, Brown and Wine.....	E	5½-14	4.05	6.95
MEN'S HARD SOLES					
6270	Men's Velour Opera, Brown, Wine and Black.....	BCDE	5½-14	4.65	7.95
6283	Men's Velour Romeo, Brown, Wine and Black....	DE	5½-14	5.10	8.75
	"B" and "C" widths made to order.				



## APPENDIX "C"

## CHUMS PRICE LIST

MARCH 1st, 1951

Sample No.	DESCRIPTION	Style	Widths	Sizes	In Stock	Make Up	Dealers Price	Suggested Resale
<b>INFANTS'</b>								
C-2210	Patent.....	Strap	B C E	5 to 8	x	.....	\$3.35	\$5.75
C-2215	White.....	"	"	"	x	.....	3.35	5.75
C-2807	Brown.....	Oxford	"	"	x	.....	3.35	5.75
C-2805	White.....	"	"	"	x	.....	3.35	5.75
C-2803	Black.....	"	"	"	x	.....	3.35	5.75
C-2817	Brown Retan Sole.....	"	"	"	x	.....	3.50	5.95
C-2707	Brown.....	Boot	"	"	x	.....	3.35	5.75
C-2705	White.....	"	"	"	x	.....	3.35	5.75
C-2703	Black.....	"	"	"	x	.....	3.35	5.75
C-2717	Brown Retan Sole.....	"	"	"	x	.....	3.50	5.95
C-2715	White Retan Sole.....	"	"	"	x	.....	3.50	5.95
<b>CHILD'S</b>								
C-3210	Patent.....	Strap	B C D E	8½ to 12	x	.....	3.75	6.45
C-3230	Patent Centre Buckle.....	"	"	"	x	.....	3.75	6.45
C-3215	White.....	"	"	"	x	.....	3.75	6.45
C-3235	White Centre Buckle.....	"	"	"	x	.....	3.75	6.45
C-3807	Brown.....	Oxford	"	"	x	.....	3.75	6.45
C-3803	Black.....	"	"	"	x	.....	3.75	6.45
C-3805	White.....	"	"	"	x	.....	3.75	6.45
C-3807	Brown.....	Monk Strap	"	"	x	.....	3.75	6.45
C-3867	Brown.....	Glillie Tie	"	"	x	.....	3.75	6.45
C-3833	Black Scuff-Proof Tip.....	Oxford	"	"	x	.....	3.75	6.45
C-3837	Brown Scuff-Proof Tip.....	"	"	"	x	.....	3.75	6.45
C-3817	Brown Retan Sole.....	"	"	"	x	.....	4.05	6.95
C-3857	Brown Scuff-Proof Tip Retan Sole.....	"	"	"	x	.....	4.05	6.95
C-3707	Brown.....	Boot	"	"	x	.....	4.05	6.95
C-3705	White.....	"	"	"	x	.....	3.75	6.45
C-3703	Black.....	"	"	"	x	.....	3.75	6.45
C-3737	Brown Scuff-Proof Tip.....	"	"	"	x	.....	4.05	6.95
C-3717	Brown Retan Sole.....	"	"	"	x	.....	4.05	6.95

## CHUMS PRICE LIST—Continued

Sample No.	DESCRIPTION	Style	Widths	Sizes	In Stock	Make Up	Dealers Price	Suggested Resale
C-4210	MISSES' Patent Centre Buckle.....	Strap	A B C D E	12½ to 3	x	.....	4.05	6.95
C-4230	" White.....	"	"	"	x	.....	4.05	6.95
C-4215	" White Centre Buckle.....	"	"	"	x	.....	4.05	6.95
C-4235	" White Centre Buckle.....	Oxford	"	"	x	.....	4.05	6.95
C-4807	" White.....	"	"	"	x	.....	4.05	6.95
C-4805	" Black.....	"	"	"	x	.....	4.05	6.95
C-4803	" Brown.....	Monk Strap	B C D E	"	x	.....	4.05	6.95
C-4607	" Brown.....	Ghillie Tie	"	"	x	.....	4.05	6.95
C-4867	" Balck Scuff-Proof Tip.....	Oxford	A B C D E	"	x	.....	4.05	6.95
C-4833	" Brown Scuff-Proof Tip.....	"	"	"	x	.....	4.05	6.95
C-4837	" Brown Scuff-Proof Tip Retan	"	"	"	x	.....	4.05	6.95
C-4857	" Sole.....	"	"	"	x	.....	4.35	7.45
C-4817	" Brown Retan Sole.....	"	"	"	x	.....	4.35	7.45
C-5807	YOUTHS' Brown.....	Oxford	B C D E	11 to 3	x	.....	\$4.65	\$7.95
C-5803	" Black.....	"	"	"	x	.....	4.65	7.95
C-5827	" Brown Moccasin.....	"	"	"	x	.....	5.20	8.95
C-5817	" Brown.....	Brogue	"	"	x	.....	5.20	8.95
C-5707	" Black.....	Boot	"	"	x	.....	5.20	8.95
C-6807	SR. MISSES' Brown.....	Oxford	AAA AA A B C D	3½ to 9	x	.....	5.80	9.95
C-6803	" Black.....	"	"	"	x	.....	5.80	9.95
C-6827	" Brown Moccasin.....	"	"	"	x	.....	5.80	9.95
C-6835	" White Moccasin.....	"	"	"	x	.....	5.80	9.95
C-6417	" Brown.....	Brogue	AAA AA A B C D	"	x	.....	5.80	9.95
C-6413	" Black.....	"	AAA AA A B C	"	x	.....	5.80	9.95
C-6505	" Brown and White.....	Saddle Oxford	"	4 to 10	x	.....	5.80	9.95
C-6503	" Black and White.....	"	"	"	x	.....	5.80	9.95
C-6506	" Blue and White.....	"	"	"	x	.....	5.80	9.95

Terms: Net 30 days from date of invoice—Sales Tax Extra—F.O.B. Preston.

Package Charge: On all orders less than four pairs, a charge of 25 cents per package (not per pair) is made.

Telephone and Telegraph orders PLEASE prepay.

Senior Misses—Sizes 9½ and 10, 50 cents per pair extra.

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**HOUSE OF COMMONS**

Fifth Session—Twenty-first Parliament  
1951

(Second Session)

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**JOINT COMMITTEE OF THE SENATE  
AND THE HOUSE OF COMMONS**

ON

**COMBINES LEGISLATION**

Joint Chairmen—The Honourable Senator A. L. Beaubien  
Mr. James Sinclair, M.P.

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**MINUTES OF PROCEEDINGS AND EVIDENCE**

No. 11

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**MONDAY, DECEMBER 3, 1951**

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**WITNESSES:**

Mr. F. R. Hume, Counsel, and Mr. B. Napier Simpson, General Manager,  
Canadian Electrical Manufacturers Association.

Mr. W. C. Kennedy, Frigidaire Products; Mr. L. E. Butters, Canadian  
General Electric; Mr. C. H. MacBain, Canadian Westinghouse Co.,  
Ltd.; Mr. C. L. Gulley, Superior Electrics Ltd., all representing Cana-  
dian Electrical Manufacturers Association.

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1951







## MINUTES OF PROCEEDINGS

MONDAY, December 3, 1951

The Joint Committee of the Senate and the House of Commons on Combines Legislation met at 10.30 o'clock a.m. The Joint Chairmen, the Honourable Senator A. L. Beaubien and Mr. James Sinclair, M.P., were present, Mr. Sinclair presiding.

*Also present:*

*For the Senate:* The Honourable Senators Aseltine, Burchill, Fogo, Golding, Horner.

*For the House of Commons:* Messrs. Blair, Boucher, Carter, Cauchon, Croll, Dickey, Mrs. Fairclough, Messrs. Garson, Harrison, Hees, Jutras, MacInnis, Mott, Murray (*Oxford*), McLean (*Huron-Perth*), Shaw, Stuart (*Charlotte*), Thatcher, Welbourn.

*In attendance:* Mr. F. R. Hume, Counsel, and Mr. B. Napier Simpson, General Manager, Canadian Electrical Manufacturers Association. Mr. W. C. Kennedy, Frigidaire Products; Mr. L. E. Butters, Canadian General Electric; Mr. C. H. MacBain, Canadian Westinghouse Co., Ltd.; Mr. C. L. Gulley, Superior Electrics Ltd.; all representing Canadian Electrical Manufacturers Association.

The presiding Chairman tabled data submitted by the Canadian Electrical Manufacturers Association relating to costs to the manufacturer, the distributor, the retailer and the consumer of certain household appliances which are printed as *Appendix G* to this day's Minutes of Proceedings and Evidence.

Mr. Simpson was recalled, read a statement amplifying certain evidence given by him on Monday, November 26, and was questioned.

Messrs. Butters, Kennedy and MacBain were recalled and questioned.

The witnesses retired.

In accordance with the recommendation contained in the Fourth Report of the Sub-Committee on Agenda and Procedure, concurred in on November 30, the following documents are printed as appendices to this day's Minutes of Proceedings and Evidence:

*Appendix A:* Brief submitted to the Committee by the Radio-Television Manufacturers Association.

*Appendix B:* Brief submitted to the Committee by the Drug Trading Company.

*Appendix C:* Brief submitted to the Committee by the Canadian and Catholic Confederation of Labour.

*Appendix D:* Letter dated November 16, 1951, addressed to the Chairmen of the Joint Committee, by The Canadian Chamber of Commerce.

*Appendix E:* Letter dated November 27, 1951, addressed to the Clerk of the Committee, by the Dominion Joint Legislative Committee Railway Transportation Brotherhoods.

*Appendix F:* Resolution passed by the 27 Annual Meeting of Delegates of the Saskatchewan Wheat Pool, held in Regina, November 6-16, 1951.

At one o'clock p.m. the Committee adjourned until Tuesday, December 4, at 10.30 o'clock a.m.

A. L. BURGESS,  
*Clerk of the Committee.*



## EVIDENCE

DECEMBER 3, 1951

10.30 a.m.

The CHAIRMAN: The meeting will come to order, gentlemen. We have with us this morning the Canadian Electrical Manufacturers Association. Mr. Simpson would like to make a comment or two before speaking on some further figures which he was asked for at the last meeting. Then Mr. Favreau will commence the questioning, and then the questioning will be continued by the committee.

Mr. F. R. HUME (*Counsel*): If I have your permission, Mr. Chairman, just before Mr. Simpson speaks I would like to refer to a matter by saying that at page 326 of the Minutes of Proceedings of a week ago today, in answer to a question, there was some misunderstanding between Mr. Favreau and Mr. Simpson. This is a matter to which Mr. Simpson wishes to speak in order to correct the reference, if that is satisfactory.

The CHAIRMAN: Certainly.

**Mr. B. Napier Simpson, General Manager, Canadian Electrical Manufacturers Association, called:**

The WITNESS: Before we proceed with the order of business for today's session, I would like you to grant me the privilege of clearing up a misunderstanding which resulted from a question asked by Mr. Favreau, and which is covered on page 326 of Minutes of Proceedings and Evidence No. 6, dated Monday, November 26, 1951. In his question Mr. Favreau referred to the various comparisons of indexes made in our brief; the questions and answers relevant thereto being as follows:

*By Mr. Favreau:*

Q. Do I take it there is no present enforcement of retail price maintenance?—A. I, as general manager, cannot answer that question because it is an individual company problem.

Q. In your brief you refer to different indexes—indexes of man hours, indexes for iron and non-ferrous metals, and so on. As far as your particular industry is concerned would you not think that the electrical equipment and fixtures index would reflect quite accurately the trend of the economy of your industry?—A. I do not know whether there is such an index published.

Q. I find it in the price index of the Dominion Bureau of Statistics for September, 1951, at page 12—electrical equipment and fixtures, the index being presently 220·2?—A. Against which period?

Q. Against 1935-39 equals 100—A. I cannot answer that without knowing on what it was based.

Q. I am just referring it to you, you might just check up on it. It is given in the September 1951 Dominion Bureau of Statistics Prices and Prices Indexes at page 12?—A. I would be very glad to, because the prices which we have discussed, in so far as we know them, do not bear out anything like that by comparison as you will note.



The CHAIRMAN: On that point, Mr. Simpson, where did you get the basis for these comparisons on food, clothing, labour, and non-ferrous metals?

The WITNESS: From the Dominion Bureau of Statistics index.

The CHAIRMAN: You accept their figures on these items but you are doubtful about the ones in your field.

The WITNESS: I do not know in what form they are published. I do not know what is included in there. It might be in the apparatus field, or it might be a conglomerate index of both. I do not know.

At the time Mr. Favreau raised the point I did not have in my possession the September 1951 "prices and price indexes", which is a publication of the Dominion Bureau of Statistics. The index which he quoted however, "220.2" was taken from the Electrical Equipment and Fixtures Index, which refers solely to residential building materials, e.g. copper wire, outlet boxes and other wiring devices.

Since this had no relation to the consumer durable goods with which we were concerned, I have talked to the Dominion Bureau of Statistics meanwhile by telephone, and find that they have in their possession a sub-index which includes only refrigerators, washing machines and radios.

For September, the figure given me by the Dominion Bureau of Statistics for this index was 183.9. You will note, however, that this index includes the special excise tax carried by radios since September 1950 and by refrigerators and washing machines since April 1951. Comparing this index previous to the tax, it is apparent, so that a comparison might be made with those things to which excise tax does not apply—e.g. food, clothing, etc., at least a minimum correction of 15% should be made.

On this basis the index of consumer goods for the comparisons made in our brief would be 160.

Putting this more plainly in answer to Mr. Favreau's questions, the items under discussion had an approximate increase of 60% in price from 1939 to 1951, which you will note is a much lower figure than food, clothing, labour and materials for which the indexes were given in the brief.

In other words, making our original point again, those price maintained items had increased less in price than had the others to which they were compared—(See pages 306 and 341, Minutes of Proceedings and Evidence No. 6).

I trust this will clarify the point which I was unable to answer satisfactorily the other day, since the material was not at hand.

Mr. HUME: Again, Mr. Chairman, may I express the appreciation of the Canadian Electrical Manufacturers Association in having the privilege of being back again. During the intervening week we have attempted to gather figures showing manufacturers' costs, distributors' costs, retailers' costs, all of which will be presented to the committee, and, I hope, will be beneficial. I should like again, sir, to re-introduce Mr. Simpson, who appeared here a week ago and remind the committee that these gentlemen are here in their capacities as members of the Canadian Electrical Manufacturers Association, and are not here in their capacities as representing their individual companies. The information which we will discuss with you in a moment with regard to prices has been set up along the lines suggested a week ago, under Company A, Company B, Company C, etc. Mr. Simpson and I are not chartered accountants, but we have attempted to understand the figures and will attempt to answer them between us as best as possible. There may be some questions we cannot

answer in these tables, but in such a case we will try and get them and send them in at a later date. Before the figures are referred to by Mr. Simpson, I should like to point out—I believe the information has been distributed—the reason some of the manufacturers have shown two sets of figures is to illustrate the point made in the brief that the demand for these kinds of products fluctuates violently, and production is attempted to be established on a basis to take care of these changes in an orderly fashion. Recently the demand for these durable products manufactured by the members of this association has fallen off drastically, with the result that manufacturing volume has decreased, and you will see the effect that that has had on the decreased volume on some of the cost figures, the manufacturers' cost. I understand, sir, that this is the first time that costs have ever been presented. Under usual conditions, the manufacturer attempts to forecast market conditions by calling on his experience over the years, and is able to estimate fairly reasonably. In the past they have had good success at that, but the imposition of excise taxes and severe credit restrictions, however, as you will see, have thrown them completely off balance in a great many places, with the result they have large inventories, commitments to suppliers, tools and machinery and so on. The large losses which you will see reflected in these statements are the result of the unpredictable action of the government in imposing these taxes as an anti-inflationary measure, and you will see these cost figures are intended to be presented only as a comparative basis as to manufacturer's cost before the imposition of taxes and manufacturer's cost at the present date, in 1951.

I should like to call on the general manager of the Canadian Electrical Manufacturers' Association, Mr. Simpson.

*By Mr. Favreau:*

Q. Referring to the refrigerator index, I am in the same position as you are, I do not know about yours and you do not know about mine. Do you have an index with you and can you tell us in points to what extent it increased after April, 1951?—A. I cannot do it on that sub-index because as I say I telephoned to the Dominion Bureau of Statistics and it is a sub-index which they do not publish regularly but which they keep on consumer goods, and it was given to me over the telephone.

Q. You will agree that while the index would be 175, for instance, an increase of 15 per cent of excise tax would not reflect itself to the extent of 15 per cent, it would be 8 per cent?—A. No, if you take 183 and there is a reduction of 15 per cent you will get 160 or less. I only applied 15 per cent whereas since April excise taxes on radios have been 25 per cent, so I have not given it the full impact.

Q. That 25 per cent on radios and 15 per cent on washing machines and refrigerators is on manufacturer's price?—A. Yes, that is correct.

Q. It would be much lower on retail price?—A. What I am doing is merely pointing out the index which you quoted to me did not refer to the matter under discussion. I have attempted to clarify it for you as well as I can.

Q. That is why I pointed it out to you and gave you the reference. I will now refer to the list of price maintained appliances which has been filed by your association in, as you have said, a rather short period, and I will first ask you to give to this committee some explanation as to that matter of losses on which you have just touched. Referring to company B, for instance, I note that there is at the bottom of the page in the right corner a percentage of 27.3 in a red circle. Will that correspond to a loss to the manufacturer?—A. Yes, I thought before you got into this I would have a chance to explain that we have no way on a Gestetner machine of showing red or black and it was necessary to circle it with a red pencil. These circled items are loss percentages and not profits.



Q. I notice in the case of company B that the sales and excise tax has increased from \$16.27 to \$44.75, which will be a difference of about \$28 in increased tax. How do you account for the manufacturer's cost in the same period of time being increased by \$120?—A. It is very easy to answer. Previous to the budget, as you know, we had a very good market and most manufacturers were on a full production basis. I gave you figures last week which showed that employment in the industry was less than 50 per cent, and production was in the neighbourhood of 40 per cent on an over-all average. As you know, it is only on mass production that the manufacturer can get the price on his products down to a reasonable level. Immediately after the impact of the budget with the sales tax and 15 per cent excise tax, and very strict consumer credit regulations, the bottom just dropped out of it until the manufacturers today are on a 40 per cent production basis and that is why costs per unit have increased. You will note also that many of these manufacturers were in the middle of expansion programs which they had originally started under some government encouragement in order to increase Canadian content and save United States dollars. Even before taxes the percentage of mark-up was 1 per cent, and he is now operating at a loss of 27.3 per cent.

Q. That is if he has kept up the same staff and the same production and manufacturing expenses?—A. No, he has not kept up the same staff. How could he? I have already said employment in the industry is only 50 per cent of what it was prior to taxes.

Q. Under such circumstances with increased costs and reduced production did you think it wise on the very day the tax was increased to increase the retailer's margin on the same items by \$16 and give him a margin of \$135 instead of \$119?—A. I do not think I can answer that question. Are you speaking now of the dealer mark-up?

Q. I am speaking of the margin, not the mark-up, the margin in dollars and cents.—A. I can only say this, that during the war, I believe, and this is only hearsay on my part, I know the retailers or dealers made representations to the Wartime Prices and Trade Board and some basis was arrived at as to their mark-up.

Q. I note that in all cases where the tax was increased the distributor's cost was increased by the amount of the tax plus an additional margin, and that the dealer's cost was also increased in each case by an additional margin which was over and above the amount of the additional taxes; is that right?—A. I am told that is correct.

Q. What would be the reason for this additional increase in the margin of profit which was forced upon the retailer?

Mr. THATCHER: The margin is the same, the percentage on the dealer's investment is the same.

Mr. FAVREAU: Most probably that is the answer.

The WITNESS: I think Mr. Thatcher's answer is correct.

Mr. FAVREAU: I will leave it to the members to ask for any further particulars on that list.

*By Mr. Favreau:*

Q. According to your contention the refrigerator sub-index of 183.9 per cent over and above 1939 would in reality be an increase by 60 instead of 80 per cent?—A. That is approximately correct.

Q. Will you agree that between 1939 and 1951 the production of most of these electrical appliances, and speaking essentially of home electrical appliances, has increased in proportion between four and seven times what it was in 1939?—A. Are you referring to the total output of the electrical manufacturing industry?



Q. I am referring to the total output of electrical ranges and rangettes between 1939 and 1950, and also washing machines and individual household refrigerators. These are figures from the Dominion Bureau of Statistics.—

A. Well, if they have so stated I presume they have facts to back it up. Admittedly the output increased vastly but I could not tell you if it was three and a half or five times or ten times.

Q. I will tell you very frankly that this is information I received by telephone so I will just put the figures to you and you can tell me whether in accordance with your experience they may be exact. For instance, electrical ranges may have increased by five times between 1939 and 1950 comparing the 1950 total production with 1939?—A. You are speaking of units of output?

Q. Yes, would that be correct?—A. Does that figure you have given me include ranges and rangettes also?

Q. Just ranges. I understand rangettes would have increased three times, but that is just approximately. Would you prefer I obtain the figures and table them?—A. I think that would be better. These gentlemen seem to think from their own knowledge of the industry it is somewhere in the neighbourhood of three times.

Q. I propose to table some figures but in order for you to check up may I put it to you that refrigerators may have increased by six times if you compare 1950 production with 1939.—A. We would say that is approximately correct.

Q. And ironing machines, which is something relatively new as far as common household use is concerned, have increased by eleven times?—A. As you say, ironing machines were not in common use before the war, and it could be twenty-five times and it wouldn't mean very much.

Q. That is why I said they were not in common use. I gather from your testimony that it is against the policy of your association of manufacturers as such to discuss maintained prices at your meetings.—A. It was the policy laid down by the board of directors of this association, when it first was incorporated. Any discussion of price, discounts or anything relative thereto is strictly forbidden in any association meeting or any section or committee thereof.

Q. In accordance with your experience, however, is it the custom in dealers' meetings to have groups of manufacturers appearing before the committee and discuss prices with them?—A. No, it is not. I may go further than that and say I have had requests during the past four years from both dealers and retailers for discussion between ourselves and these have been consistently refused and we have never met and discussed these things.

Q. Do you sometimes receive recommendations from groups of dealers to establish certain schedules of prices?—A. We do not.

Q. Do you know about the Hardware and Metal trade magazine?—A. I know there is such a magazine, but I do not know who publishes it.

Q. Do you know what the Canadian Electrical Distributors' Association is?—A. I know that is the name of an association.

Q. I have here a report of a meeting of the Canadian Electrical Distributors' Association in the presence of a number of manufacturers where it is said the meeting approved a revision of schedules on lighting fixtures and directed two recommendations to manufacturers along this line.—A. I would not have any word on that personally. I believe certain manufacturers are members of the Distributors' Association because they perform two functions, they are both manufacturers and distributors.

*By Mr. Carter:*

Q. I think at the last meeting I cited the case of electrical appliances which sell in the United States at one price and the corresponding model

sells in Canada at double that price and sometimes more than double, and I wonder if you are prepared to give some explanation of that?—A. I do not believe anybody here is in a position to give you what you ask for in that matter. I do not know with the limited information which I have been able to obtain personally whether or not the same model you speak of in the United States is sold in Canada. The member companies of this association as such do not import American goods. There may be the odd exception, but there would be very few for sale in Canada, since we manufacture them here.

Q. That is what I have in mind, when the corresponding model is manufactured in Canada it has all the features of the American model. It is manufactured in Canada and sells for double the price its counterpart sells for in the United States. I would like to know why that is so. Why does the model of the manufacturer in Canada have to sell at double the price at which the corresponding model sells in the United States?—A. I think I can only answer that question in part. In the first place, the Canadian Standards Association requirements on consumer goods and other electrical products, in accordance with the Canadian electrical code, are much more strict here than on the other side. In the second place, as I say, we were encouraged by the government to make these all-Canadian products in order to save dollars. Great expenditures have been made on capital equipment in factories and so on, to expand production to take care of the Canadian market. Tooling costs are the same here as in the United States. However, they are amortized over a production, which as a guess, I would say is one-tenth of what it is in the United States. Our labour rates, and material costs are approximately the same and, if you build the whole picture up, you will find that these prices are not gauged at all because of a price in the United States and trying to get just under it or just over it—as somebody has stated once before the House. The prices are based on costs and on reasonable profit for the manufacturer.

If you will examine these sheets and the examples you have there, you will find that the products are shown to have, for the manufacturer, a profit which is in many cases less than reasonable, and mark-ups to the distributor and dealers which are apparently reasonable, in view of what they have to do with the appliances on the way through to the consumer.

I suppose that our high prices are one of the penalties we pay for Canadian citizenship. Personally, I am prepared to pay it. I do not want to see us, as Canadians, become merely hewers of wood and drawers of water. If we tear down these tariffs which you bring up, and you raise the question really, sir, of tariff—and that is all it is—but if we knock those down then we are just going to close all the industrial plants and depend for employment on something else. I do not know where that something else is going to come from. It is something we have to pay for our Canadian citizenship and we should be glad to pay it. I do not know any way out of it.

Q. I wonder if Canadian citizenship accounts for the tremendous difference in prices? I had in mind a model of clock radio that sells in the United States at a retail price of under \$30—\$29.95.

Mr. CROLL: Call it \$30.

*By Mr. Carter:*

Q. Yes, call it \$30. It is made by the same company in Canada and it sells on Bank street for over \$60—\$62.50. I presume the American company would have its distributors' mark-up and retailers' mark-up, the same as we have here in Canada, but I find it hard to understand and I cannot see how



the manufacturers' costs and even the tariff would account for that tremendous difference in the price when the article is made by the same company?—A. May I have Mr. Butters answer that question, he is more familiar with merchandising than I am?

Mr. BUTTERS: I would like to answer that question very briefly. I talked briefly on it a week ago today.

There are always exceptions to a rule and, if there is a radio that is an exact and comparable model selling in Canada for twice the list price in the United States, I do not know of it. I would go further and say it is probably not made by a very reputable manufacturer.

Mr. CARTER: Should I state the model and company here?

Mr. CROLL: Surely.

Mr. CARTER: The manufacturer I had in mind is Canadian General Electric.

Mr. BUTTERS: I do not think that is true then, I would question the information. I do not think it would be the same radio.

I did give you a comparison on a refrigerator and I can give you numerous comparisons. You state, however, that these things sell at twice what they sell for in the United States. The figures I gave you last week on a refrigerator indicate that it sells in the United States for \$374.95. Twice that is \$749.90. If we, as a company, brought that refrigerator over—and I gave you the figures you will recall—we would take off the excise tax of 10 per cent in the United States; we would add the exchange; we would add the value for duty; we would add the sales tax; the excise tax; and our own profit plus the dealer's profit; and with all that the refrigerator would sell for \$580 list in Canada—not \$750. We make the same identical thing in Canada—in fact a better product in that our refrigerator has door shelves and the American model has not—and it sells for \$499.

As a matter of interest, I am sorry to hear this radio was a General Electric model and I will look into it further. I can hardly believe it.

As some of you know, we manufacture electric blankets in Canada and we do not protect ourselves under the tariff. We actually sell electric blankets in Canada from 10 per cent to 20 per cent lower in price than those available in the United States. The answer to that is, of course, that people on the other side have to come to Canada for wool. We have the advantage in Canada of a better wool price and, as manufacturers, we pass that advantage along to the consumer in a list price 10 per cent to 20 per cent lower than American list prices.

I would like to look into that radio matter further. Could you give me the model number and tell me where it is for sale? It may not be shown in the window at the right price. There may be an error there.

Mr. CARTER: I phoned up the General Electric people and they listed a lot of dealers who sold that model. I forget what the model is but one model is 516—whether it is the American or Canadian model I do not know. I think it is 505, Canadian, and 516, American.

Mr. BUTTERS: Could we just clarify that a little further. I certainly stuck my neck out when I asked about it because I happen to be with General Electric. However, we do not manufacture in Canada a comparable model clock radio, comparable in every respect to the American model.

Mr. Simpson has already mentioned that the standards under which we work in Canada are higher. The average radio as produced by the manufacturer in the United States will not pass the Canadian standards. That goes for the clock as well but, when you refer to a clock radio the clock may be the same and the radio may be a lot different. We do not follow the numbers



which they manufacture in the United States—there is not a comparable number. All our clock radios are made in our plant at Toronto. They are distinct models in themselves and they are designed by us. I do not think you could make a comparison between them.

MR. CARTER: It does the same job and has all the same features—and I think that is all that is required?

MR. BUTTERS: It might not be as good a radio. You can have two clock radios which look very much alike but one may have a three-tube radio set and one may have a five-tube set—it may be altogether different.

*By Mr. Carter:*

Q. I will let that go but there is one other question I would like to ask the witness. Do they export these electrical appliances to other countries? Do you export these radios and refrigerators out of Canada?

MR. SIMPSON: There is some export on refrigerators and ranges mostly—and there would undoubtedly be some export on several other different lines. It is something that I cannot answer without looking it up directly.

As a matter of fact I think if the records are consulted they will show that our exports were considerably greater before the dollar shortage, and before import controls by various other countries around the globe, which do not permit the entry into their countries of our goods.

*By Mr. Carter:*

Q. When you get these orders for export do you get them direct from the people ordering or do you ever get export orders through the parent company in the United States?—A. That is a question I cannot answer.

Q. Can any of your associates answer?—A. The answer is no.

Q. All orders are direct from the country which imports the article? You never have to fill a part order for the parent company in the United States? Supposing that the General Electric Company in the United States had an order for 1,000 refrigerators, 1,000 radios, or 1,000 ranges, would they at any time pass part of that on to their Canadian company?—A. That is something I cannot answer.

THE CHAIRMAN: I think in the days before these restrictions, when countries wanted to get the advantage of the British preferential rates, it was a proper practice, but with the dollar restrictions I think it is very difficult for either the Americans or the Canadians to enter those markets now.

MR. CARTER: Before I close I take it that it will be all right to table the letter from the Newfoundland Co-Operative Union?

THE CHAIRMAN: Mr. Carter is tabling a letter from the Newfoundland Co-Operative Union giving their views to this committee. Is it agreed that it shall be tabled with the correspondence? It is a two-page brief.

Agreed.

Mr. Thatcher?

*By Mr. Thatcher:*

Q. I am not just clear in my own mind about the significance of these figures we had tabled this morning. Are we to take it that the main point which is being made is that the appliance industry at the moment is losing money pretty consistently?—A. We could not make comparisons between price maintained goods and goods which are not price maintained, because we have not access to the records of other industries. On the floor of the House and

in the press, there have been a lot of erroneous statements made about the big electrical manufacturers' profits, and so on.

This invitation went out over the telephone and by letter couched in exactly the same way to all these appliance people. If you examine the basis on which the answers came back you will realize how hard it is to get something done on a uniform basis, in so far as costs are concerned, at any given time. You will note there is one thing in common throughout these. You will find that even before taxes in most cases, their profit was not even reasonable and you will find that since the impact of the tax in April in many cases the profit turned into a loss. That is why I would like to establish the fact that in so far as the Canadian public and this committee is concerned these manufacturers' prices are more than reasonable.

Q. Mr. Simpson, I am sorry but I do not follow. When there is such a loss as Company B had—27·3 per cent on one appliance, why doesn't the price go up to take care of it? Is it because the industry had such large inventories on hand when the new taxes came into effect?—A. There were not large inventories on hand when the tax came on, but they accumulated very rapidly—for the simple reason that you have a production line; you have personnel there to keep it operating at a certain rate; and if suddenly somebody cuts off your market you cannot stop that line tomorrow. It is a gradual process of trying to cut orders for materials and trying to let staff go. However, the first thing you know is that you have accumulated an inventory beyond the possibility of sales—before you can slow up.

If somebody would only say six months ahead: we are going to put these taxes on at the 1st of April, we could pull in our horns and get down to the proper level by that time.

Q. Are we to assume that sooner or later the prices of these appliances are going to go up pretty substantially, in order to cover these losses?—A. I think that is so, unless the situation changes.

Q. There is one thing that worries me in this appliance business. I wonder whether you can throw some light on it. In the appliance field, there are some manufacturers who sell through their own outlets direct to the consumer. Are there many who follow such a procedure to your knowledge?—A. No.

Q. Are there some?—A. Yes.

Q. Well, suppose this legislation passes— —A. There are two or three in that category and they are very large.

Q. Yes, I am thinking of Maytag Washing Machine Company and a few others?—A. They are not members of this association.

Q. Suppose this legislation goes through, Mr. Simpson, those companies would still be able to keep maintained prices if they desired?—A. You mean at their factory door?

Q. No, at their own stores.—A. I think this legislation, as I remember it, stated that there would be no harm in them publishing a price list but that would not then be a minimum list price.

Q. Perhaps I have not framed my question clearly. What I want to know is this—where a manufacturer has his own stores and is selling direct to the consumer right across Canada, would this legislation in your opinion—prevent him selling through those stores at a maintained price right across Canada?—A. I do not see how it possibly could.

Q. Would the proposed legislation not be giving that type of company a preferred position?—A. It is conceivable that it might. It might put them in the same state as the very large retailer who could sell his own branded lines at any price that he would prefer to sell and cut nationally branded lines of any other manufacturer.



Q. If price maintenance is abolished, and if companies with their own outlets are not going to be affected by it, would there not be a danger that more and more companies would try to sell direct to the consumer?—A. A trend could be developed along those lines—that manufacturers would establish their own retail outlets and sell directly.

Q. There are a lot of small retailers who are afraid of that happening. If manufacturers establish their own outlets, as they may do, the smaller dealer may lose his agency, and he could conceivably be forced out of business.

I do not know whether or not such a fear is justified. But I would appreciate it if the minister would state whether there will be protection against such a happening?

Hon. Mr. GARSON: Obviously they have the protection of competition. We must not assume that a manufacturer can establish a retail outlet for nothing. He has rent to pay, he has his employees to pay—he might have to pay them even more than they are paid by retailers now—and when he establishes that outlet he still has to face competition from the other manufacturers who are wise enough to sell through their distributors; and they will not have the fixed prices of resale price maintenance.

Mr. THATCHER: I am just wondering—suppose General Motors right across the country says, “All right, if we cannot fix our price to dealers we will set up our own agencies, that will be within the law.” Could that not happen?

Hon. Mr. GARSON: Yes, but they have to face the competition of those dealers who are agents for other concerns and who are not operating under resale price maintenance. Whatever the price that may be arrived at of the other products at the retail level, in order to get their share of the business they have to meet these other prices. As one of the witnesses here the other day pointed out—one of the witnesses representing the beauty supply dealers—the mere fact that it is a manufacturer who sets up a retail outlet or even a wholesale outlet does not enable him to avoid the costs of operating that outlet. You are asking me for my opinion on that and I am giving it for what it is worth—it may not be worth very much—but I should think that on a retailing operation, especially in a smaller city or town, one individual could run it more efficiently than a big company could, because the company not only has to get good men to run it, but they have to supervise it and to audit it.

*By Mr. Thatcher:*

Q. Just one more comment. I repeat that some retailers are afraid certain manufacturers will take advantage of the legislation, and get around it by setting up their own agencies to sell direct. It must be admitted that this is one more danger of the proposed legislation. That is all, Mr. Chairman.

The CHAIRMAN: Mr. Croll, you are next.

*By Mr. Croll:*

Q. Mr. Simpson, I may have been mistaken, but I would like to draw your attention to this company “B”. Would you mind referring to it? “Appliance—Range”.—A. On the first page.

Q. The first, company “B”. Before we get to that, in reply to a question by Mr. Carter when he asked you about the difference in cost as between the American and the Canadian products, you gave him a great number of reasons, and one of the reasons you gave him, you said, and I marked it down: “Labour costs were the same in both countries”. I am going to suggest to you that the contracts, the union contracts in the United States and Canada, carry a differential of some 20 per cent to 25 per cent in favour of American labour.—A. That



is quite so, and—I cannot tell you where I saw it but I have seen it two or three different times—the production per man hour in the United States is much higher than it is in Canada. It would balance that out.

Q. I am in no position to refute you on that, because I have not the figure with me at the moment, but I did have the other one in my head and I remember it very distinctly. All right, we will get down to something we both know more about. You may be right on the other, I do not know. You said, in reply to a question by Mr. Favreau, that the retail margin of profit in dollars and cents was increased after the government increased its excise taxes.—A. In dollars.

Q. And cents. The retail margin of profit to the retailer was increased in dollars and cents after the government raised its excise tax.—A. That is correct.

Q. Let us carry it further. In effect, what happened was, and this is assuming that the retailer was receiving, say, 40 per cent, that 40 per cent was his margin, and if the product was originally \$100, he would earn \$40. That would be his profit in dollars and cents.—A. Gross?

Q. Yes, I am talking about gross, and then after the government increased its taxes, say 10 per cent, the product would then be \$110 and then the retailer's profit would be \$44.—A. I would think that is the basis on which he operated.

The CHAIRMAN: You are working on costs, they are working on selling price.

Mr. CROLL: I am talking about their selling price to the retailer. I am quite correct, Mr. Chairman.

The CHAIRMAN: When they talk about 40 per cent, it is not on their costs, it is a 40 per cent discount on what the retailer is going to sell it. That has been the point running through all those discussions—one group have mark-ups, and I believe you gentlemen have discounts, and a 40 per cent discount is 66⅔ per cent profit on cost price.

*By Mr. Croll:*

Q. What struck me—I may not be right on it—was this, that when the tax went on there was a profit made on the tax.—A. That is correct.

Q. That is the point I am getting at.—A. It does not matter what the dealer is paying for, if he is paying taxes it is the same as if he is paying for nails or anything else he buys. He marks it up, and, Mr. Croll, this thing happened during the war. I am not saying it was right or wrong. I am only telling you what happened. These mark-ups here, as you can see, cost the dealer, and particularly the smaller dealer who has to finance his paper at the bank, considerably more money in financial charges than he had to pay before, so he does need some mark-up to cover that. They went to the Wartime Prices and Trade Board and submitted their prices and retailers were given a mark-up by the W.P.T.B. and this is, in theory, no different than what was granted to them by the government during the war.

Mr. CROLL: During the war we were not operating in a free economy, as you well know; we were operating under the Wartime Prices and Trade Board, which was a planned economy.

Mr. HEES: If it was fair during the war, it is fair now.

Mr. CROLL: Do you mind if the witness and I have a discussion on this?

Mr. HEES: I was just putting a question.

Mr. CROLL: The witness does not need any help from you.

*By Mr. Croll:*

Q. It was a planned economy at that time, and what we are operating in today is a free economy, or what we hope is a free economy; so I do not see

the reference to what the Wartime Prices and Trade Board did during the war. I am getting back again to my original question. Prior to the increase in excise tax of 15 per cent in your business, was there not a general increase?—A. In April, 1951, there was a fifteen per cent tax imposed on major appliances, refrigerators, washing machines, ranges. At that time there was already a fifteen per cent tax on all the traffic appliances, which had been imposed in September, 1950, and in April, 1951, that was increased to 25 per cent.

Q. Getting back again to my original point: When the increase in excise tax came about there was a comparable increase in dollars and cents to the retailer at that time in profit, gross profit?—A. That is correct.

Q. And at the same time—I will take you now to company “B”, the appliance—range figures that you provided. The percentage mark-up, prior to the increase, to the dealer was 51·7 per cent, to the distributor 12·7 per cent, and to the manufacturer 1 per cent. Mr. Simpson, I find that very hard to understand.—A. Mr. Croll, I can only say this to you, that from the accounting department of a very reputable company I have been given these figures and I presume they know what they are doing, that their accounts are in perfect order, and I cannot gainsay the figures which they have given me.

Q. I will just carry those figures a little further for the purpose of the record. That after the tax increase the percentage mark-up to the dealer was 51·3 per cent, which is a drop of ·4 per cent; to the distributor, it was 12·9 per cent, which was an increase of ·2 per cent; and the manufacturer, I gather, a loss 27·3 per cent—that red indicates a loss?—A. That is correct.

Q. It is a loss of 26·3 per cent—that is the situation as it stands at the present time?—A. It is really a loss of 28·3 per cent, because there was a 1 per cent profit which was changed to a 27·3 per cent loss. This might interest you. I know what you are getting at is the size of these supposed mark-ups.

Q. Mr. Simpson, not “supposed mark-ups”, because I take it you say these are actual figures.—A. Yes, that is quite true. I have here the Dominion Bureau of Statistics daily bulletin dated November 19, 1951, and I read:

Following are the gross and net profits respectively (expressed as percentages of net sales) of the 20 trades in 1950, as shown by the bureau's study, with the comparative figures for 1948 within parentheses: and I read midway down the list: Appliances and radio, 10 per cent for the year 1950 as against 9·5 per cent for the year 1948, being the net profit accruing to retail outlets in that business.

That may help you in your study.

Q. Will you turn over to Company “B”—“appliance—range—apartment size”. I call your attention to the percentage mark-up, which was 47·1 per cent prior to the tax increase and became 51·6 per cent after the tax increase. You have those figures?—A. Yes, I have it here.

Q. I also find that very hard and difficult to understand, I suppose that is for the same reasons that you have already given?—A. Yes, the companies were asked to submit figures on these various units to assist the committee in their deliberations. That is a figure that was given to me. I have no doubt they were quite honest and faithful in their giving of them, but I am afraid I cannot explain the difference or differential in those figures.

Q. Coming back again to Company “B”, the first one I had a little difficulty in following. On the fourth line of “appliance—range”, you show manufacturer's cost \$185.64, plus sales and excise taxes \$16.27, making a total of \$201.91. That is the price prior to the tax increase?—A. That is correct.

Q. And the price after the tax increase: manufacturer's cost \$276.78, sales and excise taxes \$44.75, making a total of \$321.53. I do not quite follow that \$276.78. Perhaps someone could explain that.—A. That is the increase, you mean? You cannot reconcile the \$185.64 and \$276.78?



Q. Yes.—A. That is the question I answered a short time ago, Mr. Croll, and is wholly due to the fact that production is now 40 per cent of what it was previously, and it merely relates to volume. When your volume goes down your cost per unit naturally increases.

Q. That is all, Mr. Simpson.

The CHAIRMAN: Thank you, Mr. Croll. Mr. Shaw, you follow.

*By Mr. Shaw:*

Q. Mr. Simpson, referring to Company "B" as an example, "appliance—washer". You show the manufacturer's cost prior to the tax increase at \$97.41, and the price after the tax increase is shown at \$124.10. Below that you have listed the actual sales and excise taxes in dollars. What period do you tie those prices to? Is that the average since the budget?—A. That, yes, is the price and breakdown of that machine previous to the budget on April 10, 1951, and the price comparison now. You cannot figure cost, Mr. Shaw, unless you take it at a given date.

Q. That \$124.10 would be the manufacturer's cost as of when?—A. Last week, anytime during October.

Q. You cannot indicate what the comparable figure may have been for May?—A. For May?

Q. Yes.—A. I would say it probably would have changed very little in May, because by that time it would not have felt the full impact of the tax. In other words, the manufacturer having had no warning would not at that time have been able to slow his production or curtail the supply of materials being delivered to his door. His production was probably the same and, therefore, his cost the same as in the month previous, but as soon as he could slow it up and his volume began to decrease, which would slip him into June or July, then his costs would immediately start to go up as shown. That is purely a question of volume, of production.

Q. Yes, I appreciate that. Is it customary, Mr. Simpson, when tax increases are imposed, is it the general practice in anticipation, let us say, of a lower volume of business, for the manufacturer to rate his costs higher more or less automatically. Is it a customary practice in business to do that? In other words, increase manufacturer's costs almost immediately? Maybe I am not making myself clear.—A. I am sorry.

Q. What I have noticed, Mr. Simpson, is this, that almost invariably we find that immediately after taxes go up the manufacturer's costs go up, that is quite apart from the tax itself, adding the tax in. In their bookkeeping they immediately rate their costs higher.—A. Not immediately, but you have to remember that the impact of the tax is felt as volume decreases, and when you decrease volume you immediately raise the unit cost of production. You are not viewing these manufacturers' costs as arbitrary, Mr. Shaw, as arbitrary figures set by the manufacturer? They actually represent what it costs in dollars and cents, overhead, labour, material and so on, worked out on a dollars and cents basis. This is not an arbitrary figure.

Q. My only reason for asking that, Mr. Simpson, is that I have noticed frequently that with the bringing down of the budget the prices to the retailers will invariably go up beyond the actual tax increase itself. That is why I asked that question. It will be noticed in almost any store that after a tax increase the increased selling price to the consumer is in excess of the actual tax increase itself.—A. That is what Mr. Croll's question and discussion was about, that the mark-up is greater than the actual amount of the tax.

Q. Is that a common practice?—A. Yes, as I say, it is a percentage mark-up on the tax. It costs the retailers more to finance their paper at the bank, par-



ticularly the smaller retailers who have not sufficient funds to carry themselves, and, as I say, this practice was permitted by the Wartime Prices and Trade Board.

Q. According to practically all of these financial statements we have before us relating to appliances the commodity is going out from the manufacturer to the distributor below the manufacturer's cost?—A. Since the tax, yes.

Q. And the manufacturer is still manufacturing and moving those commodities out at less than cost; is that correct?—A. This is correct.

Q. And that is quite general in the appliance field according to the figures you have submitted?—A. That is correct, since the tax.

Q. The balance sheets of these companies over the period of the last four months would in practically all cases be in the red, is that your contention?—A. In so far as the appliance industry is concerned. If you will look at company E who was a manufacturer of small household appliances, you will note his profit has come down and in the third quarter he shows his loss, and his loss again for the month of October and his loss from July to October inclusive. I only point that out to you because it is mentioned there in dollars and cents for that particular company. I can say this, that as far as I know practically all companies in the appliance industry, certainly starting in August, and for the months of September, October and November, have shown losses.

Q. One other question along that line. Can you tell the committee why the manufacturer does not set his price to recover costs? Would he be any worse off if he arranged that the retail price or his price to the distributor enables him to recover his costs? You may say he would not sell, but wouldn't he still be better off than going broke this way? Why does he not sell to recover costs?—A. He has certain materials on hand in which he has a large investment. He cannot allow it to sit there, he has to keep the plant open and he is always hoping that tomorrow the government will reduce the tax and reduce consumer credit regulations. He cannot afford to shut down the plant with the large investment he has in it, and I think you stated yourself if he raised prices beyond all reason he would not sell his goods anyway.

Q. It is a question of going broke?—A. If it goes on long enough. We are looking for a reversal on policy; it is getting near Christmas and we are looking for Santa Claus.

Q. You are surrounded by manufacturers, I assume. May I ask one of them if he buys his raw material or component parts in the price maintained field?—A. The answer to that from one of the gentlemen is a wish that they did. As a matter of fact with the shortage of material they are buying in the grey market with prices often four times what they should be.

Q. You would advocate price maintenance, then?—A. If they had price maintenance on metals, which I think would be impossible of accomplishment, their costs would be considerably lower because they have been having to pay two and three times the price they should.

Q. I am not talking about government maintained price, I am talking about producer maintained price. Do you believe in the right of the producer of raw material to fix his price to the manufacturer in the same way the manufacturer in so many cases fixes the price to the consumer?—A. I prefer "suggests". I believe they should have the right to fix it for all the reasons we have given. We have shown the consumer gets a square deal and nobody can give him the rooking which these fellows get on the price of raw material which goes into their products.

Q. Do you mean the consumer of the finished commodity or the manufacturer?—A. I think it protects the consumer of the finished commodity because there is only sufficient mark-up to ensure a reasonable profit to distributors and retailers.

Q. Are you a manufacturer?—A. I am general manager of the Canadian Electrical Manufacturers' Association.

Q. You have manufacturers sitting with you; I cannot remember this gentleman's name?—A. Mr. Kennedy.

Mr. SHAW: Mr. Kennedy, you are a manufacturer, are you not?

Mr. KENNEDY: That is right.

Mr. SHAW: Would you prefer having raw materials and component parts which you use in your business price maintained by the producers?

Mr. KENNEDY: They are now in effect.

Mr. SHAW: Across the board?

Mr. KENNEDY: Yes.

Mr. SHAW: You are competing with other manufacturers for raw materials?

Mr. KENNEDY: That is right.

Mr. SHAW: Prices vary?

Mr. KENNEDY: That is right; there is no price maintenance in that field. The retail appliance dealer has the same opportunity to shop for appliances as I have to shop for steel.

Mr. SHAW: Not for your appliances?

Mr. KENNEDY: Yes, he has.

Mr. SHAW: Would you agree you should have taken from you the right to shop for a material which is produced by only one producer, or would you prefer to have it as it is now, where you can go out and barter?

Mr. KENNEDY: Would you repeat your question?

Mr. SHAW: Let us assume that there is a producer of a certain commodity which you require in your industry, and he is the only producer of that specific commodity. Would you prefer having him fix his price or would you prefer the right to go out and shop?

Mr. KENNEDY: I must answer your question by saying if he is the only supplier of that particular commodity the price is already fixed.

Mr. SHAW: You still want to shop for a comparable product?

Mr. KENNEDY: Yes, just as I would expect the dealer or consumer to shop.

*By the Chairman:*

Q. I would like to ask you one question. I heard what you said about the terrible effect of these taxes and you say the full impact was felt about August. I am looking at company B, and it is my recollection of the income tax returns in the electrical business, that they never had a better year. Before the tax increases company B made 1 per cent on ranges, lost 1 per cent on rangettes, lost 16.5 per cent on toasters, lost 13.2 per cent on washers, lost 11.6 per cent on irons, and what I am wondering is how they made as much money as they did.—A. This company which you speak of was in an expansion program and had some large capital expenditures in regard to the appliance end of their business. They are one of the larger companies and their other lines had to carry them until they had developed and obtained a market. They got caught in the middle of it when the tax was imposed, and here is the result of it. From a tax viewpoint you would only see the consolidated balance sheet which would show they had more than made up on the oranges what they had lost on the bananas.

Q. This is more than bananas, this is quite a range of fruit. Is this company a fair example if it is deliberately losing money on products to establish them in the markets?—A. I think you will find that all companies in the last four months have shown a loss.

Q. I am only talking about your figures before tax increases. I do not care what has happened since. You have explained the very serious effects these tax increases have had, but here the price is before tax increases.—A. It was due to a development program and you have to obtain your volume. There is an example in company L.

Q. I would like to stay with B, because B was picked by your association as a typical example. I do not think a company embarking on an expansion program is a fair example.—A. I did not pick any companies; I asked almost every appliance company in our industry to furnish me with figures. These figures got in on time, and I have picked nobody.

Q. Now, with regard to this matter of resale price maintenance, when the manufacturer fixes the mark-up the retailer got at 51.7 per cent, that is a discount of 100 per cent. Fifty-one per cent on the retail price is a 100 per cent mark-up on what he paid.—A. A discount is less than a mark-up. If you take an item that sells for \$1 and have 50 per cent on it, that is \$1.50, but if you take the consumer's price and refer it to the manufacturer's price of \$1, that would be a discount of one-third.

Q. I agree. My point is this, if the retailer gets 51 per cent mark-up, the distributor 12.7 per cent, and the man who actually sets the price has 1 per cent, he is not a manufacturer, he is a philanthropist.—A. We agree with that.

*By Hon. Mr. Garson:*

Q. You say Canadian standards are more strict. Now, how much would you say they add to the cost, or can any of your colleagues answer that?—A. I do not think I can answer that. I might take as an example the Canadian Standards Association, which for the protection of consumers and because of fire hazard, insist on individual fusing for each burner and the oven in a Canadian range. In the United States they have only one fuse box that controls the whole range. That makes for easier servicing in Canada because if you have one burner go off, you know it is controlled by one fuse.

Q. I understand that, but my question is how much that added to the cost?—A. I cannot give you an estimate.

Q. On this point the chairman was discussing, which seems to be the crux of the whole matter, I would like to state what my understanding is of your evidence, my understanding is made up in part from inferences I have drawn. As I understand it, you have asked companies A, B, C and so on to state to you what their costs and profits were immediately prior to the tax increase and what they have been since, is that correct?—A. No, I didn't put the question in that way. I asked them to give me cost figures on their various appliances, and profit figures, and if possible show the differential between their cost and their sales to the distributor and the differential to the dealer. Some companies have given that and some haven't. I have no control over what basis they came in on, but we made the same request to each one.

Q. The purpose of these statements is to indicate the change in price and mark-up before taxes and as it was after the tax increase; isn't that right?—A. No, that is not altogether the case.

Q. It shows the price prior to the tax increase and the price after the tax increase. What does that language mean?—A. Mr. MacBain, would you care to answer that question?

Mr. MacBAIN: I think the point that most manufacturers had in mind when they submitted their prices and their costs in this way was to emphasize the fact that costs are not static, they fluctuate a very great deal.



Hon. Mr. GARSON: And when you submit column 1 as the price prior to tax increase you are saying to this committee that is the suggested list price on consumer's cost and distributor's cost and so on as of that date. Is this cost figure as of one month or is it for one day or what?

Mr. MACBAIN: It would vary with each manufacturer, depending upon the base period that he took.

*By Hon. Mr. Garson:*

Q. If it will vary from one manufacturer to another, and this is submitted to us as being on a uniform basis, will you tell us how much reliance as a committee we can place on it?—A. It is not submitted on a uniform basis. If you will look through these and take each one individually you will find that it is entirely different from the others.

Q. But they are in that form?—A. Yes.

Q. Company B—"appliances", "range", "suggested list price"—all of the language is the same and the figures are the same. Any person reading it would think it was the same, but I accept your point of view—because I was convinced that it was the case before I asked the question.

Now, Mr. Simpson, you said that even before the tax went into effect the majority of these companies were losing money on the majority of these appliances?—A. I did not say the majority of the companies.

Q. If you did not say the majority it is the majority is it not? Company B on ranges 1 per cent; Company B on rangettes— —A. The same company.

Q. —apartment size, 9 per cent. Company B, turnover toasters 16.5 per cent; washers 13.2 per cent; irons 11.6 per cent; refrigerators 7.4 per cent— —A. That is the same company. Let us go to some other company—take Company G.

Q. All right, what did it do?—A. They have figures for 1949, 1950 and the ten months of 1951.

Q. But Company G showed a loss on their washing machines, did they not?—A. In 1949, yes.

Q. Yes?—A. In 1950 they made a profit.

Q. But whether a given company shows a profit or loss upon a given appliance at a given point of time depends, I suggest, upon circumstances that have not very much to do with this comparison we in this committee are attempting to make. I understood you to say, for example, that some of these companies, even before the tax increases went into effect, had engaged in large production programs to produce these goods in Canada and to save American dollars?—A. That is correct.

Q. And that production program is reflected in their costs at the time?—A. That is correct.

Q. Therefore, and I am not suggesting for one moment that your figures are not accurate—and I think they are the only figures you could have got or could have submitted to this committee—but so far as being of any use to us in pinpointing the effect of the tax increase or the value of resale price maintenance as a policy, I would suggest—and would you not agree—that they are almost valueless?—A. No, I would not agree with anything you have said.

Q. Not even my statements of fact?—A. I think it is a misstatement of fact.

Q. The statements of fact are taken from your brief?—A. I beg your pardon, sir; I entirely disagree with you. We have shown you in good faith a complete cross-section of this industry and that the profits, as you have in your conversation inferred, are less than reasonable—and in many cases they are losses.

They have not been picked and they have not been selected as to period. I asked these companies as a whole for returns and they gave the information. As we suggested last week we would much sooner have had you formulate the list of questions and let us answer, but that suggestion was thrown out.

Mr. HEES: Hear, hear.

Hon. Mr. GARSON: Company B shows a loss, a substantial loss on a number of appliances. I can only take it, and I do take it—but if I am wrong I want you to correct me—that the reason in the case of Company B was that it had gone into a large development program of capital costs which at that point in time were perhaps unduly reflected in the costs of their appliances as they are set out here? Because, you would not have us believe that this company is losing on all of the appliances it makes even before the tax goes into effect, would you? That is what your figures show but I cannot believe that is the statement you want to make. Now, what is the correct fact? Was Company B, before the tax went into effect, losing 9 per cent on its apartment rangette, 16·5 per cent on its turnover toaster, 13·2 per cent on its washer, and 11·6 per cent on its iron? Do you make that as a statement of fact—that it is losing on those appliances before the taxes went into effect?

The WITNESS: I do not make the statement at all. I asked for information from the companies and these are figures given by the accounting departments of those companies. I have every reason to believe they are correct and given in good faith.

Hon. Mr. GARSON: I expect they are given in good faith but I find them incredible.

Mr. THATCHER: There was already a substantial tax on those items before.

Hon. Mr. GARSON: Well, would it not be a fair thing to say that each one of those companies, in the year to which these figures apply, would show a substantial profit on the over-all operations—upon which they would pay income tax?

The WITNESS: Not if they were appliance companies. What year are you speaking about?

Hon. Mr. GARSON: Take the year prior to the tax increase?

Mr. THATCHER: This year.

Hon. Mr. GARSON: Yes.

Mr. THATCHER: Last year.

The CHAIRMAN: Take the last fiscal year.

Hon. Mr. GARSON: 1950. Did you—

Mr. CROLL: Let us get the answer.

The WITNESS: If you refer to Company G, it follows these things through.

*By Hon. Mr. Garson:*

Q. No, I would like to stick with Company B?—A. Of course you would, but I am trying to show you what this other company has done over a period of three years.

Q. What I am interested in—and what I would like you to be interested in if you do not mind, because you are the witness—is Company B.

Can you explain why, even before the tax went into effect, that company was losing substantial sums of money while at the same time it was allowing substantial discounts and mark-ups to distributors and dealers?—A. I do not think the discount to distributors and dealers has much to do with it. Regardless of your own cost of production which is reflected in unit costs—you cannot

pass that on to the distributor or dealer because he has to have his mark-up to stay in business. If you want to market your product you have to market it through the distributor and dealer and there is no other answer.

Q. The trouble in Company B is that it had just embarked upon a substantial development program which reflected additional costs—A. I do not think there is any use in you asking me any more questions about the operations of this company. I do not know the intricacies and details of the company.

Q. Do any of your associates know?—A. No, they would not.

The CHAIRMAN: One last question, Mr. Garson.

Hon. Mr. GARSON: Now, the suggestion was made that the reason for the retailer's mark-up going up as a result of the imposition of tax was that, as it came to the retailer, it was part of his cost on which he had to have his percentage—and that has been recognized by the Wartime Prices and Trade Board. That would not be true if it were imposed in the form of a retail sales tax?

The WITNESS: No, it would not. We would prefer that. We would prefer that it had been applied at the retail level and then the public would know that you were putting these taxes on, and it would not be hidden.

The CHAIRMAN: Mr. Hees?

*By Mr. Hees:*

Q. I think it was when you were answering a question by Mr. Croll you said that the mark-ups which manufacturers allow retailers are approximately those which were O.K.'d by the Wartime Prices and Trade Board?—A. In effect, yes. What I was endeavouring to say was that the Wartime Prices and Trade Board had allowed mark-up on the actual tax because of the additional cost of financing involved.

Q. So the mark-ups which dealers are charging on electrical appliances today are approximately the same as those O.K.'d by the Wartime Prices and Trade Board?—A. I do not know whether they are on exactly the same basis or not, but in principle they are.

Q. In principle we can take it then that as the Wartime Prices and Trade Board was a government agency the mark-ups were fair at that time, and there is no reason to believe that they should be considered as unfair at this time?—A. That is right.

The CHAIRMAN: Did he say they were the same?

Mr. HEES: Mr. Simpson said they are in essence the same today.

The CHAIRMAN: I did not understand him to say that.

Mr. HARRISON: He said the principle was the same.

The WITNESS: I said the principle of the mark-up was the same as approved by the Wartime Prices and Trade Board. I did not say that the percentage was the same.

*By Mr. Hees:*

Q. I thought you said the percentage of mark-up was the same. If the percentage of mark-up which a retailer is allowed before the excise tax went into effect was 40 per cent, that would represent a certain dollar value, but after the tax goes into effect it would be 40 per cent plus 40 per cent of the excise tax?—A. Yes.

Q. That is the point I want to establish. We will say the margin allowed the dealer is 40 per cent and that amounts to \$10—before the excise tax went into effect, then the profit to the dealer after the excise tax went into effect was \$10 plus 40 per cent of the excise tax?—A. Yes.

Q. In other words, the customer is paying not only the excise tax but the retailer's mark-up on the excise tax?



That is a very important point I think, Mr. Chairman, and it is a point which I am very glad to have cleared up. It is exactly what the opposition declared would happen when the tax went into effect. The consumer is not only paying the excise tax which the government is collecting, but also he is paying the retailer's mark-up on the excise tax.

The CHAIRMAN: Under a system of resale price maintenance with fixed mark-ups.

Mr. HEES: No, under any system.

The CHAIRMAN: No, no.

Mr. HEES: Yes, it is. It does not matter whether there is resale price maintenance or no price maintenance. If the retailer takes a certain percentage of profit he takes that same percentage after the tax is applied and the consumer has to pay the tax plus the retailer's profit on the excise tax—whether it is under a system of resale price maintenance or not. Is that not correct?

The WITNESS: That is right.

The CHAIRMAN: That is Mr. Simpson's view.

Mr. HEES: Would the other manufacturers agree that it is a correct statement?

The WITNESS: Yes.

Mr. HEES: Thank you very much, that is all.

The CHAIRMAN: Senator Fogo?

*By Hon. Mr. Fogo:*

Q. I have just one question arising out of the reference to the Wartime Prices and Trade Board. Were not the mark-ups allowed by the Wartime Prices and Trade Board those which existed prior to the coming into being of the Wartime Prices and Trade Board?—A. I am sorry sir—

Q. A few minutes ago you were asked whether the mark-ups now existing were somewhat similar to those allowed by the Wartime Prices and Trade Board in your industry during the war, and I understood you to say yes.—A. I think, sir, my statement was that the mark-up of profit on tax, which is inevitable in this type of thing was allowed in principle by the Wartime Prices and Trade Board during the war. Originally, as a matter of fact, it did not apply but I understand the retailers came down here and sat in with Mr. Gordon and some of the others, and they were given an allowance of mark-up on the tax because of the additional financing involved, discounting paper at the bank and so on, to do their financing. What I am saying is this in principle is the same as they allowed during the war. I did not say the percentage was the same. It may be, but I do not know.

Q. My question was, if you recall: Were the percentages allowed not less than those that were in existence prior to the time of the Wartime Prices and Trade Board?—A. I do not know that.

Q. Are any of the other gentlemen here competent to answer that question?—

Mr. HUME: Mr. Kennedy perhaps could answer that.

Mr. KENNEDY: I believe, sir, that the Wartime Prices and Trade Board ruled on a percentage of the mark-up on the tax slightly smaller than the percentage of mark-up ordinarily enjoyed prior to the excise tax.

Hon. Mr. FOGO: Yes, but apart from tax altogether, were not the general mark-ups approved, as someone said, by the Wartime Prices and Trade Board, lower than those which the industry enjoyed, shall I say, prior to the regulation by the Wartime Prices and Trade Board?

Mr. KENNEDY: To answer your question directly, I would say yes, and while I have the opportunity I would like to say that in the industry I happen to be associated with, the trade discounts at the retail level are lower today than they were at that time.

Hon. Mr. FOGO: I believe that is right.

The CHAIRMAN: Senator Burchill.

*By Senator Burchill:*

Q. I do not know whether you have any figures on volume of sales. We know, of course, that costs depend a lot on volume. Now, have you any figures to give the committee as to the trend today in Canada of sales volume.—A. I have no figures, sir, but in a cursory sort of way some months ago, in September, we made an examination and, as I stated before—and these are approximate figures across the board—production in the appliance industry is approximately 40 per cent of what it was at this time last year, as to volume, and from conversations that I have had with retailers I understand that sales at the retail level are 25 to 30 per cent of what they were at this time last year. I cannot give you specific figures, but those are approximations in so far as we could determine by a spot check.

Q. Is there any evidence from the dealers as to purchasing resistance on account of high prices of your electrical appliance?—A. That is very general conversation. It is not wholly due to prices, sir, either; it is very much in part due to the very strict consumer credit regulations, which require the purchaser to pay 50 per cent down and the balance in 12 monthly payments on some items, and require him to pay on major appliances one-third down and 12 months to pay the balance.

Q. That has slowed up purchasing?—A. Yes, because the monthly payments are difficult out of the weekly wage for most people.

The CHAIRMAN: Mr. Harrison, you are next.

*By Mr. Harrison:*

Q. I think it was Mr. MacBain who made the statement that costs of manufacturing vary violently. Is that correct? Well, if that is correct, would not the figures shown in your profit sheets before us very violently also if made at different periods of time?

Mr. MACBAIN: Yes, they would vary, but unfortunately the costs of material, the cost of labour have been mounting steadily and up until recently manufacturers were able, by increasing efficiency and due to their larger volume, to keep up fairly well with that. However, immediately prior to the tax most manufacturers were buying material, mostly steel, at fantastic prices, and that particularly applies to the period before the tax was put on when volume was high, so that while profits do vary they have never varied to the same degree as the losses which have been experienced in the last few months.

Mr. HARRISON: That I can appreciate, but what I was trying to establish is that if you set out a set of cost figures, such as you have put before us today, covering different periods of time, even if you took them during the period of the increased tax or before, they would also vary greatly in their net result. Am I right?

Mr. MACBAIN: Yes, you are right, but my previous explanation applies.

Mr. HARRISON: What I am getting at is actually cost figures are only relative to this period and over, shall I say, a period of years those figures really do not mean very much. Am I right?

Mr. SIMPSON: I do not see how you can make that statement.

Mr. CROLL: The gentleman answering is competent—

The CHAIRMAN: Mr. Simpson is the head of the delegation, Mr. Croll.

Mr. CROLL: The question is directed to Mr. MacBain.

Mr. HARRISON: This subject was brought up by Mr. MacBain.

Mr. MACBAIN: Would you repeat your question again?

Mr. HARRISON: What I am getting at is the value of these reports to us. They certainly convey the picture as of the moment, but if they were related to a period before the tax increase they would be considerably different.

Mr. SIMPSON: You can take Company "G" again, which I have asked everybody to do. It goes back to 1949 and shows the whole thing.

*By Mr. Harrison:*

Q. Is it entirely in relation, though, to the figures we have? Those are appliances you are speaking mostly of, and Company "G" covers the whole of the operations?—A. These figures you have of the 11 different examples, are all appliances.

Q. Well, from the answer I have obtained from Mr. MacBain, so far as I gather, actually these figures we have before us are only relative to the particular period they cover, and if you had a set of sheets for, say, a year ago, comparable to these, they would convey a different picture altogether.—A. You have them in many cases for the years 1949 and 1950 and ten months of 1951, but you won't look at them.

Q. We will let that point go.

Mr. THATCHER: Let us look at them.

The WITNESS: Let us look at Company "G." They go through the whole range of their appliances in 1949 and show for the total of all appliances an average profit of 4·5 per cent in 1949. They go through the whole gamut there. They show a figure for 1950 of 7·4 per cent profit, and for the first ten months of 1951 they show a 4·1 per cent profit.

Mr. HARRISON: We will let that point go. I would like to address a question to Mr. Butters, and this is pertinent to the question I had sent to me by one of his dealers. I just want to establish the company policy here with regard to selling merchandise that has been increased in price. What is your attitude to the dealer who has some of that merchandise on hand? Can he, under your policy, proceed to retail that at the old price or must he increase it to the new price that you have established?

Mr. BUTTERS: We have not a definite policy, since you are asking me directly, in that regard. It is closely associated with the introduction of the tax. For instance, dealers had tax free merchandise on their showroom floors and in warehouses that they took the liberty of selling, in many cases, at a tax free price. In a case like that we would draw to the attention of the dealer the fact that when the tax comes off he will be caught with a lot of merchandise on his showroom floor on which he has paid the tax, so he has to make a profit at one end of the deal to offset the loss at the other. Answering your question on prices, our policy in that respect is somewhat flexible. It is not definite. If we raised the price and the dealer had some merchandise at the old price, I say if we raised the price, which we have not done for a long time, the dealer in most cases would be free to sell some or all at his choosing, and what he bought at the lower prices we would not impose on him too strongly to sell at the new prices.



Mr. HARRISON: As a former dealer, I can appreciate the point you are making that he must make a profit on his tax free goods in order to offset the loss at which he may have to sell goods which carry a tax which he has paid. In view of the question this man raised, I am glad to have your reply. He maintained that on some of your goods, when a price increase was put through by your company, not caused by taxes, that it was insisted that he increase the price of the goods on his shelf to the new prices, and he said if that was the system he was much in favour of resale price maintenance being discontinued, and he communicated that to me as his wishes in the matter. I thought that rather odd, inasmuch as he should be able to keep some benefit from your price maintenance policy. I think that is all.

The CHAIRMAN: Mr. Mott, you are next.

*By Mr. Mott:*

Q. Mr. Chairman, I would like to ask Mr. Simpson a question, referring to a question asked by Mr. Carter and also by Mr. Croll. I would like to have further explanation in regard to prices in the United States and here in Canada. Mr. Croll gave Mr. Simpson some figures showing a 20 to 25 per cent higher differential in favour of American labour, and Mr. Simpson replied that labour costs in the United States per unit were cheaper than in Canada. What is your explanation of that?—A. I do not know that I can give you any direct explanation of it. As I said to Mr. Croll, I remember reading it somewhere, but for the moment where I saw it I cannot remember. You have to remember, though, that their volume of production there is approximately ten times ours and unit costs are bound to be lower than ours.

Hon. Mr. HORNER: I read the article that Mr. Simpson is referring to. It was speaking of the cost of steel production in the United States, and it was true that Canadian workmen did not receive quite as high wages as they received in the United States, but production per man hour in the United States was much higher than it was in Canada.

*By Mr. Mott:*

Q. That is what I am coming at. It is not a case that they are not as good a class of labour as in the United States. You would say that labour works just as hard here as in the United States?—A. Well, I would think they would, but I am not professing to be an expert on that.

Q. The only other point would be in streamlining, mass production methods—have not the manufacturers here in Canada streamlined their factories to meet with the needs of the people?—A. They attempt in every way to be as efficient as possible, and they have streamlined things, which is the word you used, as far as they can. But the fact remains that a company here, with one-tenth of the volume in the United States, can never get down to the unit costs they have there, because, for instance, tooling costs are higher, and the manufacturer in Canada has only one tenth of the volume to amortize those tooling costs over.

Q. That is the reason, then, mass production and volume?—A. Yes, it is based on that.

Q. Is it the policy of manufacturers in Canada to have work done by their employees on a piece-work basis?—A. In some cases, yes. As a general rule I could not tell you, but I would think that various manufacturers adopt different methods, and I do know, from hearsay only, that there are some on piece-work.

Q. Thank you.

Mr. HUME: Mr. Chairman, before you commence to have questioning by anybody else, I would like to tell the committee that I have procured a list of models reasonably comparable, manufactured by an American company, and the same comparable model manufactured in Canada, and I have a few figures

here showing the percentage of increase as between the United States manufactured model and the Canadian manufactured model. A refrigerator manufactured by Westinghouse Electric Corporation, with their 10 per cent excise tax is \$319.95 in the United States, while a reasonably comparable model, but not identical, manufactured by Canadian Westinghouse Company with our 15 per cent excise tax and 10 per cent sales tax is \$479;—the percentage increase is 50 per cent.

An automatic washing machine which is comparable in the United States is \$299.95 as opposed to the same model in Canada with our excise and sales tax at \$439, or 46 per cent more in Canada.

An electric iron is \$12.95 in the United States, while it is \$15.50 in Canada, or a percentage increase of 19 per cent.

The CHAIRMAN: Thank you. I see you are first on the list Mr. Croll.

*By Mr. Croll:*

Q. I would like to clear up a few things. Let us go back to company B. I shall get to company G, and do not worry about that. But for company B, you gave me a figure of \$276.78.—A. That is the manufacturer's cost of a range.

Q. Of a range?—A. After the application of the tax, yes.

Q. The tax went into effect in April, 1951.—A. April 10, I think, was the date of the budget.

Q. Yes, that is right. So I assume that the figure is of that date?—A. No, it is not.

Q. Well, then, of what date is it?—A. It is as of now.

Q. That is as of now?—A. That is correct.

Q. It has nothing to do with the date, though it says November.—A. No, it reflects the reduced volume and the increased cost of production.

Q. I realize that.—A. And as I have already explained, you cannot slow up on the very day a person applies a tax because it takes you two or three months to use up the material in your shop, before you can reduce production and so forth. So it does not happen immediately.

Q. You said that it was due to the 40 per cent loss in volume.—A. The volume now is only 40 per cent, not a reduction of 40 per cent, but a reduction of 60 per cent in volume.

Q. Let me get back to what the Minister of Justice asked. He asked you if the companies generally, some of those around the table, did not make substantial profits in the year 1950?—A. Is your question referring to the companies in all lines, in the apparatus field, or only to the companies in the appliance field? I would have to differentiate between them.

Q. I have to name a company; I am thinking, for instance—let us talk about the Canadian General Electric, they are here.—A. I would not answer that question as such; we agreed that there would be anonymity.

The CHAIRMAN: No, he says their representatives are sitting here today. No one has been told the names of those companies.

Mr. CROLL: They gave them to us at the first hearing; they gave us the names of the gentlemen.

The CHAIRMAN: Yes, but not of the companies listed.

*By Mr. Croll:*

Q. No, I am not talking about the companies listed in the list. We are a little in the dark on that. Some of us are dealing generally with companies, and a couple of them happen to be here today. The companies are familiar to

us, so I ask them if their profits are not substantial?—A. May I answer you in this way, Mr. Croll, speaking from memory. The General Electric balance sheet for last year was published in all the papers.

The CHAIRMAN: Yes.

The WITNESS: And if I remember correctly, on a volume of something like \$50 million they showed an overall profit of 4.9 per cent for the year 1950. I believe that is substantially correct, but I am only speaking from memory, naturally.

*By Mr. Croll:*

Q. Then let me ask you this question, and you may answer it:

I will give you the net profit of the Canadian General Electric for a few years. The net profit for Canadian General Electric in 1946 was \$2,411,505; in 1947 it was \$3,144,381; in 1948 it was \$5,300,079; in 1949 it was \$4,506,375; and in 1950 it was \$7,039,612.

Since Canadian Westinghouse is here also I shall give the following information: In 1946 the profits for Canadian Westinghouse were \$605,904; in 1947 they were \$2,300,288; in 1948 they were \$4,177,340; in 1949 they were \$4,487,708; and in 1950 they were \$5,809,058.

The CHAIRMAN: Is that net or gross?

Mr. CROLL: These are net profits.

The CHAIRMAN: After taxes?

Mr. CROLL: Net is after taxes, as you know.

The WITNESS: May I point out that these dollar figures do not mean a thing unless they are related to volume of sales and turn-over, and percentage of profit. They do not mean a thing as dollar figures unless you relate them to sales volume and percentage of net profit. As a result the figures you have read out are meaningless.

*By Mr. Croll:*

Q. But they are not meaningless to the people who get the profits.—A. What was the percentage of profit on their volume of sales?

Q. Oh, that is another matter. The question arose following the question of substantial profits in the year 1950, and to give you some idea of what it is, I gave you authentic figures from the years 1946 to 1950.—A. You read out the dollar figures and if those dollar figures related to a turn-over, let us say, of \$200 million instead of \$25 million, or whatever it might have been, it would not show a very unreasonable profit.

Hon. Mr. GARSON: There is no suggestion that these figures are unreasonable. You seem to have a guilty conscience about them.

The WITNESS: I do not have a guilty conscience about them, Mr. Garson.

Hon. Mr. GARSON: Give us credit for having a little intelligence. No person thinks that these are abnormal. These are quite normal.

The CHAIRMAN: I think almost everybody here is anxious to see companies do well. Certainly the Department of Finance is. But company B appeared to be in the extraordinary position of losing money on nearly every item, yet—

Mr. CROLL: I do not know who company B or company G is, and I did not even ask you; but if it happened with company B or with one of those to which Mr. Sinclair and Mr. Garson have referred, it would not be quite compatible with these results which I have just read, would it?



The WITNESS: Oh yes it would and for this reason: as I stated before, if they are in a very greatly diversified line of products. Remember that we stated here last week that the appliance industry as such, in dollar volume, was approximately 15 to 20 per cent, of the over-all electrical industry, and that it was paid much more money for heavy apparatus such as transformers, generators, switching equipment, and oil circuit breakers; and that they might very easily make up on those large power items, because it was 80 per cent of the output, and would provide a greater share of the profit; so they might very easily lose on the other lines and still show what you have quoted, if it refers to one of these companies.

Mr. CROLL: I quoted from the *Montreal Gazette* of April 14, 1951, which said:

100 firms' net profits up 27.4 per cent in '50; "papers" featured with 33.7 per cent increase.

By "papers" they meant the pulp and paper industry.

The CHAIRMAN: You have had your second ten minutes, Mr. Croll. I now have Mr. Garson and Mr. Hees.

*By Hon. Mr. Garson:*

Q. Mr. Simpson, you referred two or three different times to the fact that one of the reasons for the higher costs in Canada was the fact that in the United States they had an output 10 times as great as that of Canada.—A. Approximately, yes.

Q. That puzzled me. That is not the turnout of one factory in the United States, is it?—A. I was speaking about refrigerator production. I was referring to a large refrigerator company in the United States as opposed to one operator here. They would turn out approximately 10 times what we could turn out of one of our factories.

Q. Would you say that the tooling of that large factory would be just the same as in the Canadian factory? Did you not make that statement two or three times?—A. I said that they would in effect have to have the same type of tooling.

Q. The same type of tooling but not the same quantity, I suggest; and I put it to you that while this seems to be quite obvious, your remarks seem to indicate very different conclusions. So I put it to you that if you have two factories, one in the United States and another one in Canada, which are turning out refrigerators and if the United States factory turns out 10 times as many per day as does the Canadian factory, then the cost of tooling in the same factories will not be just in the same ratio, would it?—A. I did not say it would.

Q. But I understood you to say so.—A. I did not say that. I said they would have a very much larger volume over which to distribute their tooling costs.

Q. But would they not have a very much larger tooling cost to distribute over that volume.—A. For example, if you had a press turning out refrigerator sides and forming them, you might have to operate it only about 2 hours a day in the Canadian plant to put out the required volume; but, the same press, if installed in the United States factory might turn out 10 times as much as did the Canadian press, as it would have to do if they had 10 times the volume.

Q. Oh no. I think that was what you were implying.—A. No. The Canadian manufacturer has to have the same type of tooling, but because of his reduced volume, he might only have to use it for one or two hours a day,

while in the American plant, with the very same thing, such as the metal press, they might be turning out 10 times that volume if they were working, let us say, for 12 or for 24 hours a day.

Q. I thought you were implying that the cost which was attributable to that one item was in the order of 10 times the Canadian plant; but you say you did not mean that at all?—A. No, no.

Q. What would it be? Twice as much?—A. I could not give you an answer to that question specifically. I can only say that the percentage of tooling cost in the United States, per unit, is very much lower than it would be here in the Dominion of Canada; I cannot tell you what the percentage is because it would vary with the product.

Q. Well, can any of your associates tell me?—A. I do not think they could either because it would vary with the product.

Q. I wonder if those of you who are from the Canadian General Electric Company could not tell us what is the capacity of the largest Canadian General Electric appliance plant, and how it would compare with that of the average American plant of the same company?

Mr. L. E. BUTTERS: Well, Mr. Chairman, I could answer you this way: all of their refrigerators—if you would like to use refrigerators as an example—are made at one plant in Erie, and all the refrigerators made in Canada are made in one plant in Montreal.

The point which Mr. Simpson made might be amplified and in this respect: that tooling costs, as has been emphasized, are very much higher, or rather they are comparatively higher here. For example, the tooling for stamping out a door of a refrigerator might run to \$60,000 or \$70,000. So to tool up for a large refrigerator would run in the general neighbourhood of \$400,000. Let us say that the tool in question is one for stamping out doors, and that for the Canadian market it stamps out 50 per cent of the doors. But that tool would only be kept at stamping out doors until the model becomes obsolete. That is another factor of additional cost; whereas, in the United States they would use that tool until it started to wear out, whereupon it would be replaced.

Hon. Mr. GARSON: They would get much more than 50 per cent; but they would never reach 100 per cent in the United States, would they?

Mr. BUTTERS: Oh yes, they would. In some cases they would replace tools before they discontinued a model.

Hon. Mr. GARSON: Yes.

Mr. BUTTERS: The big difference in the cost is due to the higher mechanization that the larger volume will warrant. In Canada, we are refrigerator manufacturers and I think I can speak for all of us with the amount of mechanization of our plants in Canada. But a comparable statement certainly did not appear when we came down to a comparison with American plants. The American plants operate at a much lower labour content in the product which is a high element in the cost.

Hon. Mr. GARSON: Yes.

Mr. BUTTERS: So the whole thing can be boiled down to volume. A lot has been said here today regarding comparable volume. In 1940 in Canada there were only 72,000 refrigerators produced and sold in the Canadian market, and they were produced at a very high cost. In the Canadian market in 1950 the industry produced roughly 300,000 to 350,000 units. We are just beginning to arrive at a point where we are beginning to be related to their costs, and that is the reflection in these prices which we tried to emphasize here this morning as well as last Monday, in suggesting that our increases in list prices are not comparable at all to the other product, domestically.

But as the Canadian industry reaches a level where perhaps—and I am only guessing—we make 500,000 or 600,000 refrigerators a year, we have the means, as one company, to get very close to the American costs, or to get them down within a reasonable approach to the American cost. It is entirely a matter of volume. The Canadian market is not being enough to warrant continued production right over 12 months, and that is one of the big problems.

In the United States you do not have that problem. They operate at so many thousands a week, 50 weeks of the year. They close in the United States for a two-weeks vacation. So the United States production rate does not vary very much unless they hit an emergency such as we have here in this crop in sales due to taxes and the restrictions on credit buying. They continue to show the same rate of production week in and week out, and as a result their cost goes down and down and down until they are down so far that they would have difficulty in getting them down any lower. That is the objective of a good manufacturer, to reduce his costs in every way imaginable until he feels he has got them down about as far as he possibly can without affecting quality.

But in Canada, our volume has not reached the point where we can do that. With us refrigerators are still a highly seasonal line in the appliance business. That is one point we have been stressing. Although a refrigerator is an essential thing in the home, there are still a lot of people who will do without a refrigerator when the weather is down to zero and will wait to buy one when the butter gets soft in July. June, July and August are three big months in the year and will continue to be so. We just can't keep the level of production that contributes to good economy in the Canadian market. That is the reason for our higher prices. That is our problem in striving to get our costs down.

Hon. Mr. GARSON: You are in the development stage of this business and you hope from now on, as the market builds up, you will be able to bring down your price and widen your market still more?

Mr. BUTTERS: I can enlarge on that in another line. Take the electric iron market. An electric iron is a small domestic product and as you may have noticed in some of the figures here our price in Canada compares very favourably to the American price on an iron. We in Canada as manufacturers have been able to produce 200,000 to 300,000 irons a year and our cost is down to within a fraction of the General Electric cost in California as compared to Ontario. If we can get the volume we can get the cost down.

*By Mr. MacInnis:*

Q. I just have one or two questions to clear up a point which I think has already been cleared up, but I want to direct your attention to it. It has been pointed out here in the statement made that while wages for labour were higher in the United States unit labour costs were lower.—A. That is correct, the cost per unit would be less.

Q. Wasn't that explained by the very lucid explanation Mr. Butters gave us as to greater mechanization in the United States? American labour is getting better and more complete machining and consequently can produce cheaper?—A. That is correct.

*By Mr. Shaw:*

Q. Mr. Simpson, referring to company C, about in the middle of the page they refer to factory revenue. What would be the meaning of that expression?—A. My understanding of that is what the company would get for it when it's sold to the distributor. You will notice the cost of sales is directly below that.

Q. I wondered at first whether that would be the manufacturer's cost, but I see it would not be. How do you account for the fact that there is a very, very slight variation as between the year 1950 and the year 1951 both as applied



to refrigerators and over—oven ranges as far as factory revenue is concerned. It is less than \$1 in the case of the range and as a matter of fact it is lower in 1951 by a few cents?—A. That is the question which I was answering.

Q. The only reason for asking that was I couldn't appreciate some of the wider fluctuations such as I find in company B's range and in company C it is almost the opposite.—A. That is what I was pointing out. I requested certain figures from these companies and they have been given. They are not prepared on the same basis, and that is what we talked about earlier. Company B has chosen to show its costs prior to the tax increase and after tax increase, and company C have shown the cost for the years 1950 and 1951 to date, that is for ten months. They had three very good months in the first part of the year and it tended to slump off in May down to August when it became very poor. That in effect is a sort of average because they would have had three good months, January, February and March, contained in it.

Hon. Mr. BURCHILL: May I ask the gentleman who gave us that most interesting statement from the Canadian General Electric Company one question? I was delighted to hear you say that, because some of us who are living in the maritime provinces have to pay what we think are perfectly awful prices for manufactured articles made in Ontario and Quebec and have been wondering if there is ever going to be any let-up. I take it from your statement this morning it is just a question of volume of sales and the Canadian manufacturer, given the volume, is just as capable of producing an article at as low cost as the American manufacturer.

Mr. BUTTERS: That is correct, Mr. Senator. In fact after I made that statement about irons I tried to recall what our prices were compared to the United States prices before the tax, and I am quite sure I am correct that they had a 10 per cent excise tax, they had no sales tax, and of course we had roughly 10 per cent sales tax and no excise tax. The last time I compared these figures their price for our best iron in the United States was \$11.95 and the price in Canada was \$12.50.

Hon. Mr. BURCHILL: I take it if you had the benefit of the volume of the American market you would not be afraid to compete with any American manufacturer?

Mr. BUTTERS: That is right.

*By Mr. Jutras:*

Q. You stated it depended a great deal on volume and costs could be reduced by greater volume in this country. Unfortunately I have some difficulty in understanding that. We have had periods in our history when certain products were completely shut off from competition and Canadian manufacturers had the market to themselves in certain lines, and consequently in those periods their unit production has increased substantially on. Then almost inevitably when the tariff is removed and when competition is re-established the cost goes down a bit, and when you revert back and close the market the Canadian manufacturer still has the large manufacturing volume that they had during the open market period and the prices goes up instead of down. That is the practical result of the situation although in theory it may be very nice, in practice it does not work out that way, it works out to higher prices. I have one case in mind that I think is very indicative of the whole thing. Vacuum cleaners in 1947 were almost free of competition in this country. There was a 20 per cent tariff from the United Kingdom and 5 per cent from the United States where most of the vacuum cleaners came from. In that year the total number was 105,295 and the price per unit was \$45.66. From November 12, 1947, to January, 1948, the market was closed due to government restrictions. Then Canadian production

increased from 105,000 to 138,585 and the cost was reduced to \$43.30. Then it was closed again in 1949 and the production in Canada remained what it was during the other period when it was closed. The price now went up to \$49.93 with the result that in 1949 when they had the market in their own hands the price instead of going down went up in spite of having a larger volume.

Mr. SIMPSON: When that dollar import regulation was brought in in 1947 there was a 25 per cent excise tax applied on electrical appliances. I think you are also forgetting, sir, that during that period labour rates were increased and material rates were increased. Furthermore, in general materials had to be procured in Canada because of the necessity of saving U.S. dollars and, the prices for material were higher than those that prevailed in that period also.

*By Mr. Jutras:*

Q. I think it would be very interesting to have some figures. As I say, I know there may be other factors entering into the picture but I do not think anybody ever proved the point with any figures—proved the point that the Canadian manufacturer, given a larger volume, could pass on lower prices to the consumer. As a matter of fact I would be very much interested in seeing those figures, but I do not think they have been produced. All we have heard so far is theory?—A. I do not think it is a question of production if I may say so.

At Geneva all the electrical tariffs were reduced from 25 per cent to 22.5 per cent—which is a 10 per cent reduction. The reduction on wire and cable was much more than that, but the thing that had the most effect was the change in Section 35 of the Customs Act which determines the value for duty of imports. I have forgotten the wording but in effect the value for duty is based upon an open sale in the country of origin. While the United States was supposed to have passed a Customs simplification bill which would definitely regulate that value, they have not done so. The result is that all they have to do in the United States is to establish a sale in the open market and that is accepted as the value for duty.

The fact that from January to September of this year (1951) there were over 100,000 refrigerators imported into Canada—and if that had continued for the full year it would have represented 39 per cent of the Canadian production for the year 1950, is due to the value for duty. It is not just a question of tariff. The whole thing is a complicated argument.

Mr. CARTER: I have just one little question. I want to make sure that I understood Mr. Butters correctly when he was talking about refrigerator plants. Did I understand you to say that if the market were big enough to enable you to double the output of your present refrigerator plant you could get costs down to meet U.S. prices?

You did not use the word "double" but you used figures?

Mr. BUTTERS: I said with respect to refrigerators that if the over-all industry was twice as big, as it is currently or as it has been in 1950 and 1951, I think manufacturers would aggressively target U.S. costs.

Mr. CARTER: If the manufacture of refrigerators were double what it is now?

Mr. BUTTERS: Yes, but that is quite a volume of course. You will appreciate that because I mentioned that in 1940 we only produced and sold roughly 75,000 refrigerators, but in 1950 the Canadian figure was 346,000.

The WITNESS: That is all of the industry in Canada—not just General Electric?

Mr. BUTTERS: Yes, so if we could get close to three-quarters of a million refrigerators in Canada in a year it would be a lot of business. We are looking to that of course in the future, but it may be quite a long way off.

In Canada there is another important feature to the problem. We appreciate, as manufacturers, that business in the first quarter was distorted and we went along with everybody's thinking. We could not keep pace with it and that is why the American refrigerators came in. They could not compete with Canadian prices, in most cases, and a lot of people thought those American refrigerators which came in in the first and second quarters came in at better prices than we could sell them for in Canada. That is not the case, because the highest percentage sold at prices higher than those for Canadian refrigerators—but there was a shortage and they were picked up.

The CHAIRMAN: There was really a lot of buying in anticipation of the tax increase?

Mr. BUTTERS: It was just as inconvenient for us in the first quarter and we would far rather have had it spread out ourselves.

The CHAIRMAN: I want to thank you, gentlemen, especially Mr. Butters and Mr. Simpson, for the explanations which they have given on a question which has been repeatedly raised in the House of Commons. His explanation will do a great deal to promote better understanding by the members, and by the people of the country at large, of the way in which the Canadian Electrical Manufacturers industry functions. I think that not only ourselves but the industry as well is going to be better off for the explanations which have been made here today.

We will meet again at 10.30 o'clock tomorrow morning.

The committee adjourned.



## APPENDIX "A"

RADIO-TELEVISION MANUFACTURERS ASSOCIATION OF CANADA  
159 Bay Street  
Toronto, Ontario

## SUBMISSION

TO

## JOINT COMMITTEE ON COMBINES LEGISLATION

November, 1951.

The Radio-Television Manufacturers Association of Canada includes in its membership 70 Canadian companies engaged in the manufacture of radio and television receivers, transmitters, radio components and miscellaneous electronic equipment. The Association was established 25 years ago and presently has 3 active Divisions; a Receiver Division with 18 member companies, a Transmitter Division with 8 member companies and a Parts and Accessory Division with 44 member companies. (Attached is a complete list of the Association's executive officers and the names and addresses of the member companies.)

The members of our Transmitter and Parts Divisions are not normally engaged in the manufacture of products sold to the public and it is therefore the members of our Receiver Division that are particularly interested in the subject of resale price maintenance since these latter companies do manufacture brand line radio and television receivers which are distributed throughout Canada and sold to the Canadian public through retail outlets.

We wish to emphasize that all of the member companies of the Radio-Television Manufacturers Association of Canada are manufacturers and that retailers are not eligible for membership and have no connection or affiliation whatsoever with this Association. Further, the Radio-Television Manufacturers Association of Canada has nothing whatsoever to do with the prices or discount structures of its members and each company handles its own pricing on a completely independent basis.

Our Association endeavours to represent its members in all matters of concern to the industry and to serve its members by such means as the collecting, assembling in useful form and distributing of statistical, commercial and engineering data relative to the Canadian radio and television industry.

All of the member companies of our Receiver Division are equally represented on our Board of Directors and each of these companies has strongly indicated that it favours continuation of its present individual right to resale price maintenance on its own products and believes that such a system is in the best interest of the public, particularly in the distribution and sale of such specialized products as radio and television receivers. All of these manufacturers depend for the maintenance of their goodwill on the technical performance of their products and wish to ensure that their radio and television receivers are sold and serviced by properly qualified agents.

The manufacture and sale of radio and television receivers in Canada is highly competitive and, considering the population of the country and the size of the market, there are probably more companies engaged in this field in Canada than in any other country in the world. In the case of radio receivers, there are in addition to the 18 member companies of the Radio-Television Manufacturers Association of Canada, at least 10 other Canadian manufacturing companies engaged in the production of radio receivers. (Note that 29 Canadian companies are currently listed in the Dominion Bureau of Statistics

monthly reports on production and sales of radio receivers.) Although television is still in its infancy in Canada due to the lack of transmitting stations, approximately 60,000 television receivers have been sold to Canadian residents within range of U.S. border city television broadcasting stations and it is interesting to note that the division of these sales has been between no less than 18 different Canadian manufacturers. At least 6 other Canadian companies have announced plans to manufacture and sell television receivers in Canada as the market expands. It is readily apparent that in such a highly competitive industry, where in general even a so called "large" manufacturer accounts for less than 10 per cent of the total market, there is intense competition at the manufacturing level which projects itself through the entire distribution process and assures the consumer of a fair price. Obviously no single manufacturer could suggest a resale price which was not competitive with comparable receivers made by his many competitors and expect to take any substantial portion of the market.

The maintenance of the retail price of a radio or television receiver produced by any one Canadian manufacturer does not in any way interfere with the right of competing manufacturers to produce similar products and price them as they wish and it is our contention that the publication of suggested retail list prices by individual competing radio and television manufacturers has protected the Canadian public and has assured the consumer of a fair price. Without an established or suggested list price on radio and television receivers, the consumer could not intelligently go about buying such products and in order to protect himself would feel that he should have a quotation from every retailer handling each make of receiver.

Each individual radio and television receiver manufacturer in Canada in suggesting the prices at which its branded receivers are to be resold does so on its own accord and such an arrangement does not involve any price agreement with other manufacturers of radio and television receivers. Under these conditions, competition between the large number of radio and television receiver manufacturers remains free and unrestricted in all respects and there is obviously no lessening of competition or restricting of manufacture.

A review of the Report of the Royal Commission on Prices, which recommends "that the Combines Investigation Commission give careful study to the problem of resale price maintenance" fails to reveal any evidence or conclusions that the policy of resale price maintenance on such items as radio and television receivers is not in the public interest and it is our belief that to deny the individual manufacturer the right to suggest a consumer price on his brand of radio and television receivers would be very much against the public interest. This would be particularly so in times of scarcity or in the case of residents of remote towns or villages where the consumer would be at the mercy of prices determined by non-existent local competition if not protected by the suggested list prices on nationally advertised products such as radio and television.

Radio and television receivers are not products purchased by a consumer at frequent intervals and for maximum operating efficiency and life they may on occasion require expert servicing and maintenance. The actual transaction therefore does always end with the initial purchase and the manufacturer who depends for continued sales on retaining the goodwill of those who use his receivers must be sure that the receivers are installed, serviced and maintained by the technical staffs of properly qualified retailers. In turn, the properly qualified retailer should be assured of a fair return on the receivers he sells and of fair competition with others selling the same products.

The study of the Royal Commission on Prices was mainly devoted to items which the consumer is normally buying on a day to day or other frequent

interval basis and which are in an entirely different category than radio or television receivers. In the case of the products of our member companies, the consumer is concerned not only with the initial price but with the durability and useful life of the product, the integrity of the manufacturer, the problem of installation and the service and maintenance that can be expected over a period of many years. These factors necessitate a much closer relationship between the manufacturer, wholesaler and retailer of radio and television receivers than would appear necessary in the merchandising of products purchased and used on a day to day basis. There is, for example, the matter of proper installation and servicing by the retailer. Members of the retailer's organization in many cases must receive their training and instructions from the technical divisions of the manufacturer's organization. It is obvious that in the merchandising of such products the manufacturers could not fairly take the view that their responsibility ends with the sale of the radio or television receivers to their wholesalers or retailers.

The members of our Association believe in the system of free enterprise and consider that the right of any single radio and television receiver manufacturer to suggest retail prices on his products is an inherent part of the free enterprise system. We believe that the manufacturer should have complete freedom of action in the sale of his products at all levels, regardless of the channel or channels through which the products move, since of necessity his greatest interest lies at the consumer level and without a suggested list price he could not be assured that the consumer would receive fair treatment as to price, performance and the service to which he is entitled.

We believe that to deny the manufacturer the right to suggest the list price on radio and television receivers would be very much against the public interest for the reasons outlined herein, and our Association went on record to that effect in its submission to the Committee to Study the Combines Investigation Act in September, 1950.

Respectfully submitted,

S. D. BROWNLEE,

*Executive Secretary.*

*Radio-Television Manufacturers Association of Canada*  
*Executive officers—1951-1952*

PRESIDENT—R. A. Hackbusch, Stromberg-Carlson Co. Ltd., Toronto.  
VICE-PRESIDENT—A. B. Hunt, Northern Electric Co. Ltd., Montreal.  
EXECUTIVE SECRETARY—S. D. Brownlee, 159 Bay street, Toronto.

*Member companies (November, 1951)*

(a) *Receiver Division*

Addison Industries Limited, 9 Hanna avenue, Toronto.  
Canadian Admiral Corporation Limited, 500 Lakeshore road., Port Credit, Ontario.

Canadian General Electric Company Limited, 212 King street west, Toronto.

Canadian Marconi Company, 2442 Trenton avenue, Montreal.

Canadian Radio Manufacturing Corp. Ltd., 11 Brentcliffe road, Leaside, Ont.

Canadian Westinghouse Company Limited, Hamilton.

Chisholm Industries Limited, 4515 Main street, Vancouver, B.C.

Coronet Television Corporation, Box 50, Walkerville, Ontario.



Deseronto Electronics Limited, Deseronto, Ontario.  
 Dominion Electrohome Industries Limited, Kitchener.  
 Electrical Products Mfg. Co. Ltd., 5680 Fullum street, Montreal.  
 Northern Electric Company Limited, Belleville.  
 Philco Corporation of Canada Limited, 1244 Dufferin street, Toronto.  
 Pye Canada Limited, Ajax, Ontario.  
 RCA Victor Company Limited, 1001 Lenoir street, Montreal.  
 Sparton of Canada Limited, London.  
 Stewart-Warner-Alemite Corporation Limited, Belleville.  
 Stromberg-Carlson Company Limited, 211 Geary avenue, Toronto.

(b) *Transmitter Division*

Canadian General Electric Company Limited, 212 King street west, Toronto.  
 Canadian Marconi Company, 2442 Trenton avenue, Montreal.  
 Canadian Radio Mfg. Corp. Ltd., 11 Brentcliffe road, Leaside, Ontario.  
 Canadian Westinghouse Company Limited, Hamilton.  
 Federal Electric Manufacturing Company Ltd., 9600 St. Lawrence blvd., Montreal.

Northern Electric Company Limited, Belleville.

Pye Canada Limited, Ajax, Ontario.

RCA Victor Company Limited, 1001 Lenoir street, Montreal.

(c) *Parts and Accessory Division*

Aerovox Canada Limited, 1551 Barton street east, Hamilton.  
 Alliance Tool & Motor Co. Ltd., Grand avenue & Queensway, Toronto.  
 Arrow Radio Company, 1829 Davenport road, Toronto.  
 Audio Tool & Engineering Limited, 114 Jarvis street, Toronto.  
 Burgess Battery Company, Niagara Falls, Ontario.  
 Campbell Manufacturing Company Limited, 45 Sheppard avenue east, Willowdale.

Canada Wire and Cable Co. Ltd., Postal Station "R", Toronto.

Canadian Astatic Limited, 2271 Danforth avenue, Toronto.

Canadian General Electric Company Limited, 212 King street west, Toronto.

Canadian Marconi Company, 861 Bay street, Toronto.

Canadian Radio Manufacturing Corp. Ltd., 11 Brentcliffe road, Leaside.

Canadian Westinghouse Company Limited, Hamilton.

Copper Wire Products Limited, 349 Carlaw avenue, Toronto.

Diamond State Fibre Company Limited, 46 Hollinger road, Toronto.

Dominion Electrohome Industries Limited, Kitchener, Ontario.

El-Met-Parts Limited, Dundas, Ontario.

Elora Industries Limited, Elora, Ontario.

Erie Resistor of Canada Limited, 1151 Roselawn avenue, Toronto.

Farley (T.S.) Limited, 176 Catharine street north, Hamilton.

Federal Wire & Cable Company Limited, Box 90, Guelph, Ontario.

Fleck (R.D.) & Company, 184 Bond street west, Oshawa, Ontario.

General Dry Batteries of Canada, 228 St. Helen's avenue, Toronto.

Hammond Manufacturing Company Limited, Guelph, Ontario.

International Resistance Company Limited, 11 King street west, Toronto

Kester Solder Company of Canada Limited, Brantford, Ontario.

Marsland Engineering Company, 154 Victoria street south, Kitchener.

Measurement Engineering Limited, Armprior, Ontario.

Meredith, C. C. & Co. Ltd., Queen north & Elgin streets, Streetsville, Ont.

National Carbon Limited, 805 Davenport road, Toronto.

National Fibre Company of Canada Ltd., 107 Atlantic avenue, Toronto.

Phillips Electrical Works Limited, Box 100, Brockville, Ontario.

Radio Components Limited, 560 King street west, Toronto.

Radio Condenser Company Limited, 6 Bermondsey road, Toronto.

Radio Speakers (Canada) Limited, 37 Hanna avenue, Toronto.  
 Radio Valve Company of Canada Limited, 189 Dufferin street, Toronto.  
 RCA Victor Company Limited, 1001 Lenoir street, Montreal.  
 Sangamo Company Limited, Leaside, Ontario.  
 Slater (N.) Company Limited, Hamilton.  
 Smallwood (S.G.) Limited, 397 King street east, Kitchener.  
 Smith & Stone Limited, Georgetown, Ontario.  
 Standard Radio Products, 108 Sydney street, Kitchener.  
 Stark Electronic Instruments Ltd., Stark bldg., Ajax, Ontario.  
 Stromberg-Carlson Company Limited, 211 Geary avenue, Toronto.  
 United-Carr Fastener Company Limited, 265A Davenport road, Toronto.  
 White Radio Limited, 41 West avenue north, Hamilton.

## APPENDIX B

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### BRIEF

to the

### JOINT COMMITTEE OF THE SENATE AND THE HOUSE OF COMMONS ON COMBINES LEGISLATION

Appointed to Study  
The MacQuarrie Interim Report

Submitted by

DRUG TRADING COMPANY, LIMITED  
Toronto, Ontario

Friday, November 23, 1951

### *Preface*

We are pleased to have the opportunity to present this brief in which we have offered opinions and evidence which it is hoped will be of value to the Committee in its deliberations.

The privilege of submitting this brief was requested because of the unique position of this Company, which is owned and operated by 1535 retail druggists throughout Canada. It is at present the largest individual wholesale drug house on this continent and last year transacted over 25% of the wholesale drug business of Canada. We have a wholly owned manufacturing subsidiary doing a substantial volume and we operate a voluntary chain of 450 independently owned retail drug stores under the name "Independent Druggists' Alliance" (I.D.A.).

We are quite sure that the proposed legislation would affect us materially in all three phases of our business—manufacturing, wholesaling and retailing—and for this reason we are anxious to present our views. . . .

### THE BRIEF

#### *The Loss Leader:*

We submit that the MacQuarrie Committee's recommendations were made without due regard for the consequences which might ensue from the proposed legislation. The Committee recognizes the evils of the "loss leader" device, declaring that "it is a monopolistic practice which does not promote general welfare and therefore. . . not compatible with the public interest."

The Committee expresses the opinion that this device presents no immediate danger, that extreme forms of price-cutting are not very likely in this period of inflation and relative scarcity. It suggests that effective and more desirable methods of controlling the "loss leader" device than price maintenance can be found.

We suggest that the Committee's unwillingness to make hasty recommendations regarding the "loss leader" practice leaves its recommendation in regard to price maintenance open to criticism on the very basis of being hasty and being based on a lack of thorough knowledge of the problem. . . . thereby rendering its conclusions invalid and its recommendations untenable.

#### *May We Present The Following Arguments*

1. Price maintenance is a particularly common practice in the drug trade and in the electrical goods field. Our knowledge of the drug trade leads us to assert positively that no condition of scarcity exists among the lines sold under price maintenance. Supplies are freely available of practically all types of merchandise sold through drug stores. A similar condition exists, we are informed on good authority, in the electrical goods trade. Yet the Committee infers that extreme forms of the "loss leader" device are likely where goods are relatively abundant. It is therefore in these particular trades that the "loss leader" device can reasonably be expected immediately to exert great influence against the general welfare, if price maintenance is made illegal.

2. The use of the "loss leader" technique, as the Committee recognizes, tends to lead to monopoly power at the retail level. Large traders, particularly department, chain stores and mail order houses, whose main business is in other lines, commonly use the lines of the specialized retailers as "loss leaders" to draw trade to them. In this connection, we would draw your attention particularly to the phrase "NO TELEPHONE OR MAIL ORDERS", commonly appearing in the advertising of large operators. This makes it quite apparent to business men that the motive behind such advertisements is not to sell the greatest possible volume of the advertised lines, but rather to bring unwitting buyers into the stores in order to sell other long-profit merchandise.

Unquestionably, the standards of values developed by price maintenance on branded lines leave the specialized trades open to the depredations of the "price jugglers".

In this connection, we also would refer you to pages 5 and 6 of the Appendix in which the facts of a price-cutting situation in the United States were revealed by a survey. Records showed that in two adjacent markets, one in Kansas, where Fair Trade was and is law, and the other in Missouri, a non-Fair Trade State while price juggling was "rampant" in the latter state in 1948, "the cut-throat Missouri market (was) using less than 2% of its drug store items as loss leaders"....and "the Missouri consumer without Fair Trade (was) paying 2½% more for drug store merchandise than the Kansas consumer with Fair Trade".

May we also refer you to the remark in the last paragraph of page 6 of the Appendix, "It appears that the only ones benefiting from the fact that Missouri does not have Fair Trade, are the large metropolitan newspapers carrying pages and pages of heavy black type—cut rate ads." The consumer does not benefit by "loss-leadering" and "price juggling" of a few known brands!

3. Eliminating price maintenance is expected to have little effect on the cost of living. This view is credited to the Prime Minister, as quoted in the *Globe and Mail*. October 21, 1951. Yet, the apparent reason for such legislation being instituted is because of the hue and cry against the rapidly advancing



cost of living. Members have quoted in the House, as reported by *Hansard*, the large price differentials existing between the United States and Canada. Yet, these differentials are largely due to the fiscal policy of the Government, whereby a total of 25% excise tax and 10% sales tax is now levied in Canada against many of the items quoted in the comparisons. Additional taxes on semi-necessities have accentuated this condition, as witness the fact that well over half the retail price of a package of cigarettes represents tax.

Throwing out a system under which large sections of the country's retail trade have been reasonably prosperous for many years, on the dubious assumption that there will be some general price reductions, is a risky procedure.

4. The MacQuarrie Committee's recommendation suggests that the undesirable attributes of the "loss leader" device need not cause any immediate worry in what it terms "this period of inflation and relative scarcity". We submit that any legislation of this nature should be such as will stand the test of time—and will be in the public interest not only today but in years to come. Yet the Committee infers that in periods of stable or declining prices or periods of abundance, the "loss leader" device would have widely destructive effect.

The MacQuarrie Committee does not suggest that price maintenance has been a major factor in the advancing cost of living (on the contrary, there is ample evidence that it has had a stabilizing tendency). Yet, it recommends ruling out this practice, while sounding the warning of the evils that may arise from such action at a period that may be not far off.

5. The MacQuarrie Committee offers no definite solution to the problem of "loss leaders". It suggests that further study will reveal the solution. We submit that a reasonably equitable system should not be thrown overboard until a better system, with no unsolved weaknesses, can be devised. Our experience with many years of "price juggling" in the drug trade, as well as the recent lengthy period in which price maintenance has been widespread leads us to state categorically that no equitable solution to the "loss leader" problem is possible without price maintenance. Price maintenance has certainly curbed the "loss leader" practice with what even its opponents admit has had little effect on price levels.

6. A system of maximum pricing with no maintained minimums offers the manufacturer a strong incentive, not present under price maintenance, to set his list price abnormally high, in order to gain the support of retailers in pushing his products at full price in opposition to competing open-price lines. This could result in non-advertised products being pushed at excessive profits, while the distribution of established brands would become limited and consumers would find difficulty in obtaining these desired brands.

#### *Price Maintenance and the Consumer*

You are aware of the basic arguments as to why price maintenance favours the consumer, as reported in the MacQuarrie Committee's submission, and, as no doubt included in other briefs submitted to this Committee.

We would like to draw particular attention to a few points:

Price maintenance has been largely responsible for an equalization of prices across the country. The consumer today pays the same price for a price maintained product produced, let us say, in Niagara Falls, whether she lives in Niagara Falls, Toronto, Vancouver, Halifax, Kapuskasing or Bancroft. From the source of a manufacturer outward, and from east to west, price maintenance has leveled consumer prices to a great extent because of the fact that the manufacturer is able to advertise his maintained prices in national publications reaching into every community. Thus we believe that price maintenance has had a pronounced effect in equalizing transportation charges. Certainly, in the drug trade, prior to the advent of price maintenance, many products made in Central Canada sold at higher prices in the West.

In the drug field, minimum maintained resale prices have become the everyday price of individual products. Before minimum resale prices were common, many prices were cut below the manufacturers' list prices. On the other hand, the same products sold at a considerably larger mark-up in centres where competition was not keen. For example, one of the best known drug products sold as low as 53c.—about 30c. below wholesaler's list price—when it was featured as a "loss leader". It sold ordinarily at from 89c. to 98c. In some places it sold at \$1.25, and in northern Ontario, it sold as high as \$1.60. When it was price maintained at 98c., this price became the recognized resale price and very soon was adopted generally in all parts of Canada.

2. Under a system outlawing price maintenance, many manufacturers wishing to exercise control over their brands can be expected to short-circuit the wholesaler and sell direct only to retailers that they contact and on whom they feel they can count to "unofficially" protect their prices. This would unquestionably mean that many retailers in remote areas not normally reached by manufacturers' salesmen would be unable to supply their customers with the products of such manufacturers. In the drug trade this condition could mean a serious curtailment of the efficiency of the health service performed by the druggists in small and remote centres.

3. Canada is a rapidly growing country. A great deal of the expansion is taking place on the outskirts of large centres. It is desirable that good local business districts develop in fast growing suburban areas. Without an assurance of a reasonable return for his services, the druggist, the hardwareman, the electrical appliance dealer, the haberdasher, etc., will not readily pioneer these new districts. If large traders, located either in the centre of the urban areas or in the well developed outskirts, and soundly entrenched financially, are at liberty to juggle prices so as to undermine the development of these pioneer retailers, making their operations unprofitable, forcing them out or scaring them away from such districts, the normal and sound retail development will be stunted, with a consequent deterioration of local service to the spreading population.

4. Consumer groups have been clamouring for passage of the proposed legislation. Yet most consumers will readily agree that the retailer should make a profit on his handling of goods. It is a common fallacy among consumers that the large traders operate at a substantially lower overhead than the smaller merchants. The brief submitted by the Canadian Pharmaceutical Association has presented ample proof of the incorrectness of this belief. Consumers are beguiled by the screaming bargain headlines into believing that the big traders sell everything for less, whereas the number of items bargain priced at any one time would represent the merest fraction of the operator's inventory. As the survey referred to in the Appendix points out (page 6), "with 2% of their drug store merchandise they (the price jugglers) convince a credulous public that they are buying the remaining 98% at deep cut prices."

To amplify this point, we reproduce below a statement made by Irving A. Kathman, Vice-President in Charge of Sales, Eversharp Corporation (U.S.) in an address to the Los Angeles Advertising Club on July 17, 1951:

Macy's has now cut prices on upwards of 6,000 fair-traded items. Sounds like a lot? Let me put it in its proper perspective for you. Brand name fair-traded items on the shelves of retail outlets amount to about 5% of the total merchandise offered to the public. Actually, only about 5% of all brand name products sold through a department store are fair traded. Macy's itself admitted this in an ad they ran on May 29, 1950, in which they stated that less than a tenth of the items they sold fell under



price fixing. This 10% divides about equally into 5% for price suggested products (which is a horse of quite a different colour) and 5% for fair-traded items. So all this noise Macy's is making is about 5% of the goods on their shelves? What about the other 95% of almost 250,000 items? As Shakespeare had it, "Ah, there's the rub!" For the procedure is this: Monopolist retailers who seek dominance in their trading area depend on mass selling and buying. These monopolist retailers' most potent weapon is deception. They use honoured, branded merchandise of reputable manufacturers as price bait to divert traffic through the store. When the consumers buy on a price-war basis, their minds are keyed up to "variety buying". In other words, they start with a fair-traded, well-known item and end up taking home a dozen more so-called "bargains" not advertised, and to the store this more than makes up for the loss they take on the brand name items for the other merchandise is unbranded, unadvertised and highly profitable. When fair trade is kicked out the window, you can be sure that it is the consumer who pays and suffers.

Price maintenance in some trades at least prevents the monopolistic tendencies of this type of operator from having full force... and the public is thereby protected.

5. One of the bases for sound development of any business is customer loyalty. We believe the loyal customer shouldn't be penalized... but she will be if price maintenance is ruled out! If she relies on her regular supplier for the purchase of all the lines she needs that he carries, if she doesn't flit around from store to store to try to save a penny here and a nickel there—she is penalized, because with wide open pricing, no retailer can ever meet all competition on all items. The good customer loses out by sticking to her supplier!

6. Under price maintenance the consumer is amply protected against prices being established at too high a level by the competition in the market. There is no compulsion for the consumer to purchase any specific product if the price is too high, and most price maintained products in Canada are in industries where competition between brands is extremely keen and where the manufacturer must make every effort to keep prices down.

7. Among the ranks of consumers a substantial number are themselves employed in the distributive or manufacturing trades. The security of their jobs or their earnings would be threatened if the retail trade were thrown into the chaos of widespread price cutting, for the repercussions of chaotic price cutting at the retail level would soon be felt all the way through the distributive and manufacturing trades.

#### *Price maintenance and the retailer*

We submit here these further arguments, looking at the problem from the retailer's and supplier's standpoint:

1. Elimination of price maintenance discriminates against the smaller retailer who cannot economically market his own brands. He is left without lines on which he has an assured mark-up while remaining competitive, whereas the larger retail operators who can market their own brands can also set their own price policies to show whatever margins they want. They can destroy the small operator's margin on branded lines stocked by both, while maintaining their over-all margin with their own brands.

2. Price cutting discourages small town buying. Induced by the advertising of urban price jugglers, consumers flock to these outlets, thus adversely affecting local merchants, regardless of their efficiency and pricing policies. This tends to lower the calibre of retail service available in the smaller centres.



3. Flagrant examples of unidentifiable merchandise being promoted at excessive mark-up are common when price slashing is practised. Note the instances revealed in the survey in the Appendix, page 2.

4. Economies in retail operation are possible when the retailer feels he can cooperate with the manufacturer of trade market goods. Where there is co-operation, rather than opposition, all concerned stand to gain in the long run—manufacturer, retailer, consumer. Such relationship is only possible when the dealer is adequately recompensed for his services.

Where the retailer has an assured profit margin, he is able to buy more confidently the merchandise in demand in his community. He needn't resort to costly "hand-to-mouth" buying because of the constant threat of being left with or having to mark down inventory.

5. In the drug trade, at least, where price maintenance is so widespread, although conditions in recent years have been good, surveys indicate that price maintenance has not led to unduly high profits for the retailer. The Lilly Survey of drug stores in the United States and Canada for 1950 reports an average net profit of 5.6 per cent. This represents a decline from previous years despite the advancing price level. While no strictly Canadian figures are available for the drug trade, it is estimated that net profits are on a par percentage-wise with the survey figures.

The Toronto Telegram reports on November 20, 1951, that a D.B.S. Survey among 10,000 independent retail stores in 20 trade groups, shows net profits for most of the stores smaller last year than in 1948. This survey indicated that gross margins had increased slightly. Inasmuch as expenses averaged higher by a small figure (in the 20 trades, 4 showing a decrease of 0.1 per cent and 16 showing increases ranging from 0.1 per cent to 3.7 per cent), obviously gross margins must have risen by an even smaller average, as the survey reports net profits down in 18 of the 20 trades. It seems apparent that if price maintenance has become more widespread in the past few years, as it is claimed, it has not tended to increase retailers' profits at the expense of the consumer.

6. Price maintenance contributes to the stability of the retail trade, which is a vitally important factor in the country's economy. Facing competition from many other outlets for substantially similar goods, even the efficient operator needs the safeguard it provides in order to plan his operations to produce a profit therefrom. Otherwise, the pull of competition to meet changing prices in order to maintain volume against the need for adequate margins results in a rule-of-thumb type of operation that makes it exceedingly difficult to forecast a volume of business or a gross profit that will yield a predictable return—and the results of one year's operations can no longer be used as a criterion for estimating the next year. Similarly, the results of one retailer's operation can no longer be a reasonable criterion of the operations of any other retailer.

With most of his overhead costs fixed or advancing, the retailer who would find himself in a "profit squeeze" due to such competition has to reduce his wage bill by cutting staff or reducing salaries or by reducing his own "take" from the business.

### Conclusions

There are no convincing arguments that price maintenance in this country (or Fair Trade in the United States) has been detrimental to the consumer. Many of the arguments being voiced against price maintenance indicate an obvious confusion between manufacturer-to-retailer price agreements and

"horizontal price fixing". There is ample proof, on the other hand, that such a system is in the interests of all three of the manufacturing, distributing and consuming groups.

The following quotation from Dr. Robert L. Swain, Editor of "Drug Topics", from the issue of November 19, 1951, summarizes the Fair Trade picture in the United States:

"Fair Trade is the only anti-inflationary force now working for the benefit of the consumer. The fair trade dollar is the only one having the same purchasing power it had ten or more years ago. Fair trade has checked predatory competition and given a high degree of employment in the production and distribution of fair trade products. And, by the way of emphasis, it should be pointed out that predatory competition has been strongly condemned both by the Department of Justice and the Federal Trade Commission.

Fair Trade has met with the sustained acceptance and approval of consumers and there is no evidence of any valid consumer opposition to fair trade laws. Such laws are now in effect in 45 states. No fair trade law has been repealed except for the purpose of enacting a more adequate one. Consumers have received their full money's worth under fair trade and they know it!

Fair Trade has laid a heavy hand upon the price juggling sharpsters who rake in hug profits through the practice of misrepresentation and deception. The price tricksters offer widely known, identified merchandise at and attractive price only to exact an exorbitant profit on less known, unidentified items.

Documentary evidence is to the effect that as much as 2,000 per cent mark-up is enjoyed by price jugglers in the sale of unidentified articles. This vicious type of distribution is a fraud upon consumers, a fraud which fair trade either makes extremely difficult or impossible. What right has a merchant to victimize customers merely because he has been able to lure them into his store? Should the consumer be the fly merely because the price juggler is a spider in disguise?

Fair Trade is the very opposite of monopoly. No product may be lawfully under fair trade unless it is in free and open competition with other products in the same general class. As long as such competition is demanded by law, monopoly cannot raise its head. Fair trade and antimonopoly are synonymous terms.

Fair trade is beneficial to small business, a principle to which most Senators and Congressmen have pledged allegiance. It keeps the door of opportunity open to those who might otherwise be sacrificed to mass distributors."

Substitution of the term "PRICE MAINTENANCE" for "FAIR TRADE" in the above quotation renders the statements substantially true in the case of Canada.

The MacQuarrie Committee's own report infers that price maintenance is an effective solution to the "loss leader" device. We maintain that the danger of the evils of "loss leader" merchandising is far too great to justify legislation against the lawful prescribing of minimum resale prices.

### *Recommendation*

It is our earnest recommendation that, in the best interests of the Canadian economy, the legislation proposed by the MacQuarrie Committee be not enacted. In lieu of this, we urge that the Combines Investigation Act be revised so that, operating under such Act, a board be set up with wide powers to investigate complaints that instances of resale price mainte-

nance are an offense against the public interest; such a board to include representatives of the consuming public, the manufacturing, wholesale and retail trades and the Government; and where it becomes evident to such a board that an instance of resale price maintenance is contrary to the public interest, the board shall have the power to evoke penalties against the offending parties and to require that such price maintenance arrangements be modified so as to eliminate the offense.

Respectfully submitted,

DRUG TRADING COMPANY, LIMITED

per:

J. C. GOULD,

*President*

R. CARY,

*Managing-Director*

THE KANSAS PHARMACEUTICAL ASSOCIATION

Phone 2-2717

824 Kansas Avenue,  
Topeka, Kansas,

November 6, 1951

Reg Cary, Managing Director,  
Drug Trading Company Limited,  
King and Ontario Streets,  
Toronto 2, Canada.

Dear Mr. Cary:

It is interesting to realize that the Canadian Government proposes a "minimum resale prices" law.

As you know, Kansas, sets right here by Missouri—a Fair Trade State bucking a Non Fair Trade state's cut prices. This has caused us a great deal of trouble in the form of repeal laws before the Kansas legislative body—attacks on Fair Trade.

Kansas, has quite a number of Crown Drug Stores, a large chain of the Midwest. Missouri has a number of these stores also. These two states have another Kansas and Missouri chain called the Parkview Drug Stores. Both of these chains want Fair Trade for they have seen the effects of the Missouri cut rate market and they have suffered, as the public has from it.

I went to the head offices of these two chains for my figures and find that the public in Kansas under Fair Trade is buying drug store merchandise in the over all picture three per cent cheaper than they were buying drug store merchandise in the Non Fair Trade state of Missouri.

I am enclosing a copy of the talk I made before the Massachusetts Pharmaceutical Association shortly after this survey was taken. This is my office copy and the last one we have. Will you please return it to us when you get the information you need from it?

Let us know if we can help you in any other way.

Sincerely,

CLARA MILLER,



## OFFICERS

Norman McCullough, Kingman, president  
 Robert Lewis, Colby, President elect  
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 Librarian

## FAIR TRADE

Clara Miller—Mass. Pharmaceutical Assn.  
 Convention Swampscott, June 14, 1948

Fair Trade is on trial—and we in the drug field are not equipped to defend it.

We need facts—we need to know the why of Fair Trade and its relation to our future.

Many of our younger druggists know nothing of the drastic competition of pre-Fair Trade days. Sales staffs in our stores do not realize that Fair Trade is largely responsible for the present good business—their jobs, decent pay, better hours.

Our greatest danger is our reluctance to equip ourselves to intelligently explain Fair Trade to the public. Fair Trade will remain on the Statute books only so long as we can prove, when challenged, that it operates in the public interest. Fair trade is our number one Public Relations problem. In the time allotted today, let's undertake a short course on Fair Trade. Let's review its original purpose and bring its accomplishments up-to-date.

Fair Trade is a law that protects honesty and decency in business. Like any good law, it protects everyone affected—in this case the manufacturer, the retailer, and the public.

Mechanically, Fair Trade is merely a law which allows the manufacturer to protect his brand name—his investment—from damage or complete destruction. It is not a mandatory law. It is permissive. A manufacturer may or may not establish a minimum price on his product. In explaining this to the public, we can use as an example—Sarsaparilla, which was “footballed” to death in the Pre-Fair Trade days—a dollar item “loss leadered” at 39-49-59c. We all recall the experience of Pepsodent on the West Coast—used as a loss leader until the retailer despised it and the public became confused and suspicious of the product. Sales diminished on Pepsodent until its owner “Fair Traded” it. The same thing happened to Carter's Liver Pills in the Middle West. The cut-raters were using Carter's Pills as “bait”—at 5, 7 and 9c. The public learned to know it as a cheap item and because of a continuous loss, the retailers buried it. Fair Trade was created to stop this debauch in the retail field—to stop damage and destruction to popular-branded items. As Allen Newcomb points out, “when a retailer sells merchandise in connection with the name of another man, he is selling two things—the merchandise and the other man's name.”

Fair Trade merely extends the “Coverage of Protection” of our “Patent and Trade Mark” laws to the manufacturer through his distributive channels.

The second channel of distribution protected by Fair Trade is the retailer. Fair Trade restrains the “chiseling” retailer from practices that would destroy competition. The Cambridge, Massachusetts court said it well, in their recent opinion upholding the Massachusetts minimum price law of Taxi Companies, and I quote: “Prevention of cut-throat rates assures that the field will not be monopolized by a few concerns, and will make business sufficiently lucrative to attract an adequate number of well maintained and safely operated cabs”.

Examples of false statements in the drug field designed to destroy competition can be taken from our Missouri non-Fair Trade market—one from a Katz ad—"A Big Special Sale" on hot water bottles, \$2.98 values, limit one to a customer, Sale Price \$1.29. This same hot water bottle sold from drug store shelves in Kansas at a regular price of \$1.00. The bottle wasn't a \$2.98 bottle—it wasn't even a \$1.29 value—just false statements.

Then there was the 19c Special on a certain vase advertised as the "lowest price in town". Independent druggists were selling the identical vase at 15c.

Fletcher's Castoria was advertised at 26c in a recent Katz ad. When one of my friends went to buy a bottle, the clerk asked, "is it for a baby?" She answered, "yes". He wrapped it up and said "36 cents", and sure enough in the same ad was an inconspicuous block listing Fletcher's Baby Castoria at 36c—misleading advertising.

Fair Trade has been accused of protecting a profit for the "lazy inefficient retailer". Doc Webb of Florida says—remember!! Profit margins shown in our new Kansas Fair Trade price book, with its 728 companies covering 15,000 individual items, are proof that Fair Trade does not protect an unfair profit to the retailer. Fair Trade merely protects the retailer from actual loss in the pricing of his merchandise. If retailers and wholesalers are looking at Fair Trade Laws as a means of protecting them on a margin of profit, they are misinterpreting the law.

The third and vital channel in distribution which Fair Trade protects is the consumer—what does Fair Trade do for the consumer? You and I must know the answer to this question because the future of Fair Trade depends upon proof that Fair Trade benefits the public.

In the Middle West, we have the two large states without Fair Trade laws—Missouri and Texas. These are great states—beautiful states—states rich in agriculture, natural resources and industry. Back in 1937, when pharmaceutical leaders of alert states became alarmed over the high mortality of retail business and were marshalling their forces to do something about it, Missouri and Texas druggists were drifting along with an isolationist complex. They had no organization, scant funds, and no apparent leadership. They were incredibly indifferent as to what was happening around them. State after state passed Fair Trade laws—stronger states, like Massachusetts, followed through logically with the passage of Unfair Practice Acts.

Around 1941, Missouri and Texas druggists woke up. They rallied forces and went to the legislature for "Fair Trade" relief—but it was too late. Giant chains, supermarkets—grocery, department, drug and syndicate—had pirated the drug business. The Pharmaceutical Associations, flanked by allied retail groups, fought a losing battle for Fair Trade laws. They were able to hold the bills in committee through several biennials. The knock-out blow came in 1947 when both Missouri and Texas legislative bodies killed Fair Trade outright. Small business of Missouri and Texas is dying rapidly. Organized pharmacy has spent its resources. They have no heart to go back into the battle.

Anti-Fair Trade forces no longer have their "foot-in-the-door" in Missouri and Texas. They have kicked the door wide open. All hell seems to have broken loose. Price wars are raging in these states.

Missouri Metropolitan newspapers flood Kansas twice daily carrying cut-rate ads from these giant supermarkets. Here's an example of the story they herald to the Kansas public. These prices were taken from Katz' weekend ad of June 4—Phillips Milk of Magnesia, 21c. in Missouri—49c. in Kansas because of Fair Trade; Zonite, 59c. in Missouri—79c. in Kansas because of Fair Trade; Murine, 34c. in Missouri—49c. in Kansas; Bromo-Seltzer, 39c.



Missouri—57c. in Kansas; Anacin, 89c. in Missouri—98c. in Kansas; Bisodol, 49c. in Missouri—59c. in Kansas; Fletchers' Castoria, 26c. in Missouri—36c. in Kansas; Noxzema, 37c. in Missouri—49c. in Kansas. Remember, price-cutting in Missouri was resumed about three months ago. It becomes more violent each week. Soooo—the result of all this is that Kansas housewives, veterans and well-meaning consumer organizations are on the march demanding a repeal of what seems to them to be an unfair law.

We have a Legislative Council in Kansas functioning the year round, studying bills that affect the public. This Council directs research for the parent body, the Kansas Legislature, which convenes next January. This Legislative Council has been asked to study the Fair Trade law of Kansas in its relation to the Public. The Council in turn has asked the Kansas Pharmaceutical Association to furnish them facts—proof that the Consumer of Kansas does not pay more for drug store merchandise under Fair Trade than the consumer of our neighbor state, Missouri, without Fair Trade.

As you well know, everybody's material for such proof is inadequate. We have only the Dr. Nourse, Minnesota University School of Business, Survey taken back in 1940 which proved that the consumer was paying 1% less for drug store merchandise after Fair Trade than he was before Fair Trade. Minnesota figures taken in 1940 are not sufficient. The Kansas Legislative Council is face to face with angry housewives and veterans, who are armed with 1948 newspapers telling, to them at least, an entirely different story. We, the druggists of Kansas, know from actual situations like the hot water bottle, the vase, etc.—particularly from the extreme high prices of Missouri prescription—that the Kansas consumer in the overall picture is paying less for drug store merchandise under Fair Trade than the Missouri Consumer without Fair Trade. Our problem was to get proof.

We have two large Supermarket drug chains in the Middle West—one with 33 stores scattered over Missouri, Kansas and Oklahoma—the other with 22 stores operating in Missouri and Kansas. These two aggressive chains were in operation when Fair Trade came into being. They know all of the cut-throat experience of Pre-Fair Trade days. Within their records is the history of retailing in the Fair Trade states of Oklahoma and Kansas versus the non-Fair Trade market of Missouri. They had the proof we needed for our Legislative Council. Would we be able to get it?

Last week I, personally, spent two days in the Kansas City headquarters offices of these two mighty chains and two days studying their individual units. It wasn't hard to convince the owners that it was to their advantage to open books to me and allow their gross profit figures to be released for the Kansas Legislative Council. These big operators like Fair Trade. With pride they informed me that their Kansas and Oklahoma stores under Fair Trade were netting more profits than their stores in the non-Fair Trade Missouri "dog eat dog" market. They are sick and tired to death of cut-throat battles.

Now, friends, these boiled-down figures are fairly confidential. They were given to me for the Kansas Legislative Council. We are bringing them to the Massachusetts druggists for use in contact with legislators and the public. We have no authority to release them for publication. Please do not publicize any part of this speech without first checking with Martin Adamo or Sam Silverman. Perhaps the Fair Trade Policy and Planning Committee of the N.A.R.D. will sponsor a larger survey—ammunition for all states faced with Fair Trade repeal moves.

Here is the story: we eliminated the liquor and fountain departments because Kansas and Oklahoma do not have liquor and Kansas drug stores serve very little food—besides, Fair Trade does not affect fountain departments.



The gross profit records taken from these two chain groups, comparing Fair Trade Oklahoma and Kansas Stores with the non-Fair Trade Missouri stores, prove beyond a doubt that Fair Trade does benefit the public.

The Missouri consumer without Fair Trade is paying  $2\frac{1}{2}$  per cent more for drug store merchandise than the Kansas consumer with Fair Trade and 3 per cent more than the Oklahoma Fair Trade consumer.

We find from the records that the cut-throat Missouri market is using less than 2 per cent of its drug store items as loss leaders. Just think of it—with 2 per cent of their drug store merchandise they convince a credulous public that they are buying the remaining 98 per cent at deep cut-prices.

It was interesting to note that on this 2 per cent "loss leader" group, listed as advertising on the books, a 4 per cent gross profit was recorded last year.

We find that gross profits on Missouri prescriptions are running 65 and 70 percent as compared to 45 and 50 per cent on Kansas prescriptions.

In the sundry departments, shoddy merchandise was purposely mixed in with relatively few standard brand items—the inferior merchandise in many cases carrying exorbitant mark-ups. The main evidence of "diluted quality" is undoubtedly in sundry departments. Of course, cut-rate stores were packed with "just" as good items—the old switch game. Missouri cut-rate stores seemed to be using quality pharmaceuticals in their Prescription Department and were certainly hiring top-level Pharmacists.

A gratifying observation, in analysing the book, was the verification of the owner's early statement that their stores in Fair Trade Kansas and Oklahoma were making a greater net profit than the non-Fair Trade stores of Missouri. This statement was proved true in the case of every Unit—in other words, under Fair Trade the consumer pays less for drug store merchandise, and the retailer makes more money.

It appears that the only ones benefiting from the fact that Missouri does not have Fair Trade, are the large metropolitan newspapers carrying pages and pages of heavy black type—cut-rate ads. The small newspapers of Missouri are struggling for a mere existence.

Yes, Fair Trade is sound, both legally and economically. Fair Trade has been sustained in the Courts and no Fair Trade law has been repealed. Dr. Robert Swain says, "Fair Trade is our most priceless economic and business asset." Fair Trade has demonstrated its anti-inflationary effects. Our 1947 survey showing drug store prices held at a 3.1 per cent rise while commodity prices generally climbed 59 per cent, should be standard equipment in every drug store of the nation.

Fair Trade is one of the supreme achievements of economic leadership and legal scholarship. Fair Trade assures integrity, honesty and morality in the market place.

Fair Trade is a challenge to our common sense. This challenge demands that we know what Fair Trade is, that we know what it has accomplished, that we know what can be done to make it work effectively.

We of the drug field will meet this challenge We will protect, defend and preserve this law which is necessary to our economic welfare.

## APPENDIX "C"

## MEMORANDUM

## OF

THE CANADIAN AND CATHOLIC CONFEDERATION OF LABOUR TO THE  
JOINT COMMITTEE OF THE SENATE AND THE HOUSE  
OF COMMONS ON COMBINES LEGISLATION.*Re: Setting of retail prices*

The C.C.C. of L. has repeatedly gone on record in recent years in favour of price control by the Canadian government. We still believe that this measure would be the most effective to fight inflation. Our stand in this matter is relatively simple: we claim that at the present time we have no choice to make between government controls and the lack of controls, or as it is called, free economy; we have to make a choice between government control and private controls.

It is not necessary to undertake a long inquiry to show that we are presently subjected to a system of private controls; one has but to enumerate the industries in which competition no longer exists either by reason of the small number of manufacturers, or by reason of certain agreements made between apparently independent producers. Among the latter are to be found aluminum, nickel, asbestos, pulp and paper, iron and steel producers, the automobile industry, the chemical industry, oil, farm machinery, the fertilizer industry, electrical equipment, textiles, tobacco, etc. And we could easily extend this list, so that we are in a position to assert that competition and hence free enterprise, in the true sense of the expression, have almost completely disappeared from the manufacturing industry, to be replaced by a private system of controls wherein those who occupy the driver's seat are responsible to nobody.

However, the effectiveness of private controls practised at the manufacturing industry level would have been greatly weakened if the controls had been limited to the field of manufacturing production. In fact, of what avail is it to cause the disappearance of competition in this field either by way of an agreement between producers or by means of another stratagem, if it reappears in the retail trade? Controls in the manufacturing industry have shown the need of controls in retail trade which were established thanks to the practice of resale prices.

This practice, it is known, gives the manufacturer the power of setting and imposing by coercive measures a resale price for his products. Thus, thanks to this practice, producers, after wiping out competition and setting up a private system of control at the manufacturing industry level, are in a position to do the same thing in the wholesale and retail trade. Thus, their system of control becomes complete because it makes its way right down to the consumer.

It is not necessary to reflect at great length to note that a system of price controls determined by irresponsible individuals, solely concerned with their personal interests, is inconsistent with the requirements of the public interest and of general welfare, since it leads inevitably to a high price level, if not to inflation. Now, there are only two ways of preventing the operation of a private system of controls: either to replace it by government controls or else destroy it by adopting effective legislative measures against monopolistic controls. We know that Parliament is still opposed to the setting up of government controls. Therefore, if it aims to be logical with itself and protect the



interests of the public to the extent possible within the framework of the present system, effective control measures must be adopted against monopolistic controls and in the circumstances against the maintenance of resale prices. The C.C.C. of L. cannot accept that the Canadian parliament should rule on the one hand against government controls and on the other hand in favour of a private system of controls, which would be the case if it refused to render the practice of resale price maintenance illegal.

At this level, the C.C.C. of L. accepts in their entirety the recommendations of the MacQuarrie report and desires that the legislation in this respect be enacted at the present session of Parliament. The C.C.C. of L. also supports the reasons motivating these recommendations. In fact, our movement is of the opinion that resale price maintenance eliminates competition in the matter of retail prices, encourages and renders more effective agreements between manufacturers, increases distribution costs by compelling the retailers to secure the services which the consumers do not desire, raises the prices and stiffens them more, thus contributing to render production unstable.

We should like to insist particularly on the fact that resale price maintenance compels all retailers to sell at the same prices, while operation costs vary between one establishment and another depending on the location, the services offered and the scale of operations. This aspect of resale price maintenance is unacceptable because it does not take into account economic realities and it constitutes a dangerous practice because if such a rule is accepted at the retail trade level, it will have to be tolerated also, to be logical, when it is applied in other fields, such, for instance, as the manufacturing industry.

This feature of resale price maintenance bears particularly on the working classes. Because their purchasing power is low, workers strive to save when making their purchases. To these ends, they shop in unpretentious stores whose overhead costs are relatively low and those that offer the minimum of services. However, resale price maintenance prevents the workers from making such savings, since it does not allow stores whose operating costs are trivial to sell more cheaply than those whose costs are high. The C.C.C. of L. believes that if the wealthy class wishes to patronize pretentious stores that offer all the imaginable services, it must pay more for its products than the working class which does not demand the same luxury or the same services. Thus, it can be said that resale price maintenance is a practice inconsistent with the interests of the consumers in general and with those of the worker in particular.

The main argument invoked so far to justify this measure consists in the contention that it protects the small independent retailer. Such a claim is far from being proven. In the first place, there is cause to distinguish between the case where the manufacturer occupies a position of near-monopoly and where he is in a position to impose a price on the retailers and the case where the manufacturer must fight competitors and where he must more or less yield to the pressures exercised by the retailers, if he wants to dispose of his product.

In the first case, that is to say when the retailers are compelled to stock the merchandise come what may, the manufacturer is in a position to impose on the retailers relatively low profit margins; this situation corresponds with very concrete conditions, for the retailers daily complain of this state of affairs. In this case, resale price maintenance does not protect the small retailers since he himself claims that the profit margins thus set make it impossible for him to make a living. Nay more, with the application of resale price maintenance the small retailer loses his independence and is henceforth subjected to the will of the manufacturer. Thus, in the cases where the manufacturer occupies a near monopoly position, resale price maintenance does



not protect the small retailer. Quite the contrary, this practice renders the latter's position more unstable and more uncertain. It must be noted that the cases corresponding to this situation are numerous and that they will increase in numbers accordingly as the movement of economic concentration will become more pronounced in the manufacturing industry.

There now remains the second case where the manufacturer is in a competitive position, when the retailers are not absolutely required to stock his product. Under these conditions, it is true that the retailers can bring pressure to bear on the manufacturers to secure high profit margins that will be protected thanks to the maintenance of resale prices.

But, even if the guaranteed profit margins are high, it does not necessarily follow that the small retailer is thus protected. The two arguments presented on this point in the MacQuarrie report, (page 20, paragraph 6) no doubt deserve the attention of your Committee. According to this report, resale price maintenance has the effect of subjecting the smaller retailers to a keener competition on the part of the large stores in the sector of merchandise non price maintained and attracting, thanks to the high profit margins it guarantees, a too large number of vendors in the retail trade, the consequence of which is to lessen the volume of sales made by each establishment. We claim that in the present discussion too great importance is attached to profits and profit margins. We contend that the value of sales flows from the price multiplied by the quantities sold and that the retailer's revenue is computed by multiplying the profit margins by the quantities. Now, to the extent that resale price maintenance increases the prices and ensures high profit margins, it reduces by that very fact the volume of sales. Hence, that means if the full effects of resale price maintenance and not merely its consequences on profits and profit margins are taken into account, one cannot come to the conclusion that this practice effectively protects the small retailer. It could quite easily happen, however, that by rendering such a practice illegal, several retailers would be compelled to go out of business. Such a contingency would only serve to prove, in our opinion, that the setting of resale prices keeps in business a too large number of retailers and encourages inefficiency.

But supposing resale price maintenance affords effective protection to the small retailer, it is not justified by this single fact. As a matter of fact, such a supposition only serves to raise a new problem which consists in asking one'self if small enterprise deserves to be protected even to the detriment of the consumers. If this question is answered in the affirmative, that means that resale price maintenance is in the circumstances the ideal form of subsidization likely to help and save small enterprise. The C.C.C. of L. is not of this opinion, for we believe that resale price maintenance protects the little fellows as much as the big fellows and favours as much those who do not need help as those who might need it. Precisely because it constitutes a subsidy that helps all retailers, we consider that this is an excessive and too burdensome form of help that falls on the shoulders of the consumers. There are no doubt more direct, more effective and less costly methods of helping small enterprise than resale price maintenance.

In the name of public interest, the C.C.C. of L. therefore urgently requests the Joint Committee of the Senate and the House of Commons on Combines Legislation to recommend to the Canadian Parliament to render illegal the maintenance of resale prices by the manufacturers.

CANADIAN AND CATHOLIC CONFEDERATION OF LABOUR.

Quebec, November  
23rd, 1951.

## APPENDIX D

## THE CANADIAN CHAMBER OF COMMERCE

Board of Trade Building  
Montreal 1.

November 16th, 1951.

The Chairmen,  
The Joint Parliamentary Committee on  
Combines Legislation,  
House of Commons,  
Ottawa, Canada.

Gentlemen:

On behalf of the Officers of The Canadian Chamber of Commerce, we wish to express our appreciation of your invitation to make representations before your Committee.

For your information we should like to state first of all that The Canadian Chamber of Commerce is the national federation of 700 Boards of Trade and Chambers of Commerce located in all ten provinces. The member Boards of Trade and Chambers of Commerce (the terms are synonymous) are voluntary groups of citizens organized to promote the civic, commercial, industrial and agricultural progress of their respective communities. The policy of the national Chamber is established either through the vote of the accredited delegates of our constituent members in attendance at an annual meeting or by the taking of referenda among the member organizations in the interim between annual meetings.

The proposal to prohibit suppliers of goods from requiring or including distributors to sell such goods at fixed or minimum resale prices, as foreshadowed in the Speech from the Throne, was discussed by the delegates to the 22nd Annual Meeting of the Chamber held in Quebec City, on October 30th, 31st and November 1st. It was evident from the discussion of this topic that because there was a lack of unanimity among the membership, it was felt that further serious consideration should be given to the whole matter affecting as it does the established distributive arrangement of our economy. The members, however, requested the Officers of the Chamber to urge the Government to defer legislation on resale price maintenance until the proposal could be further studied so as to determine whether the practice of resale price maintenance is detrimental to the public interest. This request was forwarded to the Prime Minister and to the Honourable the Minister of Justice.

We are now endeavouring to ascertain further the views of our constituent members but shall not be able to complete such a survey within the time set by your Committee for the presentation of the Chamber's views, viz., Monday, November 19th, next.

Despite the absence of any Policy Declaration approved by the members on this matter, our Officers are of the opinion that before any legislation is enacted the answers to at least the following questions should be determined:—

1. Will the economic efficiency alleged to be derived from the prohibition of the practice of resale price maintenance contribute in the long run to reduced prices and therefore to a lowering in the cost of living?
2. Does the practice of resale price maintenance, when not carried out in combination, actually restrict competition and detract from the freedom of the Canadian economy in such a manner as to be detrimental to the public interest?

3. Is it in the public interest to deny the basic civil right of one trader to contract with other traders, when not in combination, through the prohibition of resale price maintenance?
4. The larger proportion of retail trade is conducted by small and medium-sized retailers. In a period of expanding economic activity when adequate and increased distributive outlets are likely to be needed, is it in the public interest to prohibit resale price maintenance which might handicap the ability of small and medium-sized retailers to withstand the competitive pressure from larger retail units which can operate at a smaller margin of profit?
5. Would the effect of the prohibition of resale price maintenance be detrimental to small and medium-sized businesses and, if so, would such effect tend to bring distribution into the hands of fewer powerful outlets?
6. On certain brand-name products, where resale price maintenance is involved, there is in the buyer's mind an assurance that certain standards have been met. Frequently such products are of a kind that the consumer is unable to judge their standards at the time of initial purchase. If in such cases present standards could not be maintained without resale price maintenance, would it be wise to deprive the consumer of the assurance of such standards by prohibiting resale price maintenance?
7. It is alleged that some consumer products require specialized maintenance and skilled service. The provision for such maintenance and service may be included in the price set under a resale price maintenance arrangement. Would it be wise to interfere with the provision of such facilities?
8. Is it desirable to embark on legislation prohibiting resale price maintenance, with the considerable dislocation in the distributive system that would necessarily attend it, until the constitutional validity of the proposed legislation (which deals with matters of private contracts for the sale of goods) has been clearly established?

Some further clarification which would not appear to be readily available on the above and other related questions during the Committee's current sittings would, in the opinion of the Officers of the Chamber, appear to be desirable. We suggest, therefore, that your Committee consider including in its findings the recommendation that no action be taken on this question at the present session of Parliament.

Yours respectfully,

R. B. PERRAULT,  
*President.*

D. F. MORRELL,  
*General Manager.*



## APPENDIX E

DOMINION JOINT LEGISLATIVE COMMITTEE RAILWAY TRANSPORTATION  
BROTHERHOODS

J. L. D. Ives, Chairman, 117 Blackburn Building, 85 Sparks Street, Ottawa.

J. B. Ward, Secretary, 502-3 Plaza Building, 45 Rideau Street, Ottawa.

Brotherhood of Locomotive Engineers, Brotherhood of Locomotive Firemen  
and Enginemen, Order of Railway Conductors.

Brotherhood of Railroad Trainmen, The Order of Railroad Telegraphers,  
Brotherhood of Maintenance of Way Employees.

November 27, 1951.

Mr. A. L. BURGESS, Clerk of the  
Joint Committee of the Senate and the  
House of Commons on Combines Legislation,  
Committees Branch, House of Commons,  
Ottawa.

Dear Sir:—Reference is made to your letter of November 17 enquiring as to whether the Dominion Joint Legislative Committee of the Railway Transportation Brotherhoods desired to make representation to the Joint Committee of the Senate and the House of Commons on Combines Legislation.

I regret that the members of this Committee were in the Maritime Provinces at that time which, unfortunately, has delayed our reply; and that circumstances will not permit of our filing a formal brief. However, I would now advise as follows:

From time to time this Committee, along with other organizations, has made representations to the Government requesting that some form of price control be inaugurated to stem the continuing advance in the cost of living. Some encouragement and hope was experienced by this Committee in the Speech from the Throne, in particular that portion reading as follows:

The government has received an interim report from the committee studying the combines legislation recommending that suppliers of goods should be prohibited from requiring or inducing distributors to resell such goods at fixed or minimum resale prices. You will be asked to consider legislation arising out of the committee's interim report.

While the proposed action on the part of the government is not all that we would hope for, it is at least a step in the direction of halting to some degree the steadily increasing cost to the consumer.

The Dominion Joint Legislative Committee of the Railway Transportation Brotherhoods concurs, therefore, in legislation which will,

Firstly, make it illegal for a manufacturer or supplier to name the price at which his goods may be sold by a retailer;

Secondly, make it illegal to refuse to sell goods to a retailer because that retailer has not maintained minimum prices suggested by the manufacturer or supplier.

Yours very truly,

J. B. WARD,  
Secretary.

## APPENDIX F

Copy of Resolution passed by the 27th Annual Meeting of Delegates of the Saskatchewan Wheat Pool, held in Regina, November 6-16, 1951.  
No. 40

THAT we commend the Federal Government for proposing to introduce legislation to stop the practice of resale price maintenance by manufacturers and business corporations and recommend that this meeting declare its unalterable opposition to any degree of retail price fixing, or the determining of resale minimum prices by manufacturers, processors and suppliers of all kinds; and deplore the action on the part of some business firms in withholding supplies from wholesale houses and retail merchants who, through patronage dividends or otherwise, have not conformed to this form of monopolistic price control; and urge the Federal Government to proceed with the legislation declaring the practice of resale price maintenance by manufacturers and business firms illegal, as originally proposed, and have this done as soon as possible during the present session of Parliament.

Carried Unanimously.

## APPENDIX G

## CEMA

CANADIAN ELECTRIC MANUFACTURERS ASSOCIATION

126 Davenport Road (at Belmont)

Toronto 5, Canada

Telephone Midway 1139

November Thirtieth, 1951.

TO:

The Joint Committee, both Houses of Parliament  
to consider the Interim Report of the MacQuarrie  
Committee on Price Maintenance.

*Reference: Submission of Price Information.*

In acknowledgment of a letter received from Mr. A. L. Burgess, Clerk of the Committee, dated November 26th, we are submitting herewith information from certain companies showing the price information, which in our opinion would provide the Committee with sufficient data on which to base their judgment.

It was suggested at the hearings on Monday, November 26th, covered by "Minutes of Proceedings and Evidence No. 6" that the Committee itself would formulate a list of questions to be answered. However, it was later determined by the Committee that the manner of presentation of this price information would be left to the manufacturers themselves, with the understanding that the Committee would confine its questioning to such representations as we would care to put forward.

To clarify the situation I might say that this letter was received at 11:00 P.M. on November 26th, necessitating my return to Toronto on the 27th, and therefore, my contacts with various member companies were subsequent to that date.

Since this is a national Association with member companies spread out from British Columbia to Quebec, you will understand that the time factor did not permit submissions by all companies in the Appliance Industry. Even at the time of writing, therefore, some promised information was in transit in the mail, but was not received in time for submission to the Committee.

However, sufficient price information has been tabled, particularly in regard to what might be termed "major appliances" e.g. Refrigerators, Ranges and Washing Machines, to prove without doubt that the profit accruing to the manufacturers is entirely reasonable.

You will note that in many cases the manufacturers have shown their costs and profit margins both previous to the tax increases and subsequent thereto. Therefore, it will be noted that in several cases the result has been a loss to the manufacturer rather than a profit, since the excise tax was levied in April of this year.

## COMPANY "A"

"Confirming our conversation re List Prices on Electrical Appliances.

The Distributor's profit on the Appliances which we manufacture is only 20 per cent on the selling price, whereas the usual profit on non-electrical housewares is 25 per cent on the selling price.

In view of the fact that the distribution of Appliances involves a certain amount of service, we feel that the present margin of profit is very low."

## COMPANY "B"

## APPLIANCE RANGE

	Price Prior to Tax Increase	Price After Tax Increase
Suggested Consumer List Price.....	\$ 349.00	\$ 399.50
Dealer's Cost .....	230.00	264.00
Distributor's Cost .....	204.15	233.70
Manufacturer's Cost .....	185.64	276.78
Sales and Excise Taxes .....	16.27	44.75
Total .....	\$ 201.91	\$ 321.53
<i>Percentage Markup</i>		
Dealer to Consumer .....	51.7	51.3
Distributor to Dealer .....	12.7	12.9
Manufacturer to Distributor .....	1.0	27.3

## APPLIANCE — RANGE — APARTMENT SIZE

	Price Prior to Tax Increase	Price After Tax Increase
Suggested Consumer List Price .....	\$ 239.75	\$ 279.00
Dealer's Cost .....	163.00	184.00
Distributor's Cost .....	141.45	163.25
Manufacturer's Cost .....	144.32	215.16
Sales and Excise Taxes .....	11.04	31.25
Total .....	\$ 155.36	\$ 246.41
<i>Percentage Markup</i>		
Dealer to Consumer .....	47.1	51.6
Distributor to Dealer .....	15.2	12.7
Manufacturer to Distributor .....	9.0	33.8



## JOINT COMMITTEE

## APPLIANCE — TURNOVER TOASTER

	Price Prior to Tax Increase	Price After Tax Increase
Suggested Consumer List Price .....	\$ 9.95	\$ 10.95
Dealer's Cost .....	6.35	7.00
Distributor's Cost .....	5.27	5.80
Manufacturer's Cost .....	5.33	7.73
Sales and Excise Taxes .....	.98	1.50
Total .....	\$ 6.31	\$ 9.23
<i>Percentage Markup</i>		
Dealer to Consumer .....	56.7	56.4
Distributor to Dealer .....	20.0	20.0
Manufacturer to Distributor .....	16.5	37.2

## APPLIANCE WASHER

	Price Prior to Tax Increase	Price After Tax Increase
Suggested Consumer List Price .....	\$ 159.50	\$ 184.50
Dealer's Cost .....	103.50	120.00
Distributor's Cost .....	89.75	103.75
Manufacturer's Cost .....	97.41	124.10
Sales and Excise Taxes .....	5.91	20.30
Total .....	\$ 103.32	\$ 144.40
<i>Percentage Markup</i>		
Dealer to Consumer .....	54.1	53.7
Distributor to Dealer .....	15.3	15.6
Manufacturer to Distributor .....	13.2	28.1

## APPLIANCE—IRON

	Price Prior to Tax Increase	Price After Tax Increase
Suggested Consumer List Price .....	\$ 13.95	\$ 15.50
Dealer's Cost .....	8.95	9.95
Distributor's Cost .....	7.39	8.21
Manufacturer's Cost .....	6.98	10.11
Sales and Excise Taxes .....	1.38	2.13
Total .....	\$ 8.36	\$ 12.24
<i>Percentage Markup</i>		
Dealer to Consumer .....	55.8	55.8
Distributor to Dealer .....	21.1	21.2
Manufacturer to Distributor .....	11.6	33.0

## APPLIANCE—REFRIGERATOR 7 Cu. Ft.

	Price Prior to Tax Increase	Price After Tax Increase
Suggested Consumer List Price .....	\$ 375.00	\$ 389.00
Dealer's Cost .....	255.00	265.00
Distributor's Cost .....	225.00	233.40
Manufacturer's Cost .....	192.86	275.02
Sales and Excise Tax .....	16.67	46.68
Total .....	\$ 209.53	\$ 321.70
<i>Percentage Markup</i>		
Dealer to Consumer .....	47.0	46.8
Distributor to Dealer .....	13.3	13.5
Manufacturer to Distributor .....	7.4	27.4

## APPLIANCE—REFRIGERATOR 9 Cu. Ft.

	Price Prior to Tax Increase	Price After Tax Increase
Suggested Consumer List Price .....	\$ 399.00	\$ 497.00
Dealer's Cost .....	270.00	325.00
Distributor's Cost .....	239.40	287.40
Manufacturer's Cost .....	222.72	317.60
Sales and Excise Taxes .....	17.74	57.48
Total .....	\$ 240.46	\$ 375.08
<i>Percentage Markup</i>		
Dealer to Consumer .....	47.8	47.3
Distributor to Dealer .....	12.8	13.1
Manufacturer to Distributor .....	.5	23.4

## COMPANY "C"

## PRODUCT PROFIT AND LOSS ANALYSIS

	Years 1950		Years 1951	
	Approx. 6 Cu. Ft. Cabinet	4 Burner Over-Oven Range	Approx. 6 Cu. Ft. Cabinet	4 Burner Over-Oven Range
Retail Price .....	299.75	229.75	345.75	265.75
Less: 5 Year Protection Plan ..	5.00	....	5.00	....
Dealer Allowance .....	4.00	4.00	4.00	4.00
Factory List .....	290.75	225.75	336.75	261.75
Less: Average Discount .....	107.79	84.36	128.30	98.49
Gross Sale .....	182.96	141.39	208.45	163.26
Less: Sales Tax .....	11.97	9.81	14.98	11.80
Excise Tax .....	....	....	22.47	17.70
Freight Allowance .....	4.00	4.00	4.00	4.00
Co-Operative Advertising .....	4.36	3.39	5.05	3.93
Material Warranty .....	1.88	1.68	2.49	2.39
Factory Revenue .....	160.75	122.51	159.46	123.44
Cost of Sales .....	114.17	107.63	133.58	124.54
Gross Profit .....	46.98	14.88	25.88	1.10
Gross Profit % .....	28.98	12.15	16.23	.89
Selling Expenses .....	8.50	6.48	16.27	12.60
Operating Profit .....	38.08	8.40	9.61	13.70
Operating Profit % .....	23.69	6.86	6.03	11.10
Income Tax .....	17.71	3.91	7.87	11.22
Net Profit .....	20.37	4.49	1.74	2.48
Net Profit % .....	12.67	3.67	1.09	2.01

## PRICE STRUCTURE

	Year 1950		Year 1951	
	Approx. 6 Cu. Ft. Cabinet	4 Burner Over-Oven Range	Approx. 6 Cu. Ft. Cabinet	4 Burner Over-Oven Range
Retail Price .....	299.75	229.75	345.75	265.75
Dealer Cost .....	198.93	150.58	229.61	174.59
Dealer Profit .....	100.82	79.17	116.14	91.16
Dealer Profit % .....	33.63	34.46	33.59	34.30
Distributor Cost .....	166.66	125.52	192.23	145.53
Distributor Profit .....	32.27	25.06	37.38	29.06
Distributor Profit % .....	16.22	16.64	16.28	16.64

## JOINT COMMITTEE

## COMPANY "D"

COMPARISON OF PRICES, COSTS, AND MARKUP RATES ON ELECTRIC REFRIGERATORS  
BEFORE AND AFTER TAX INCREASES

	Prior to Tax Increase		After Tax Increase	
	7½ cu. ft.	8½ cu. ft.	7½ cu. ft.	8½ cu. ft.
(A) Prices				
Suggested Consumers Price .....	\$344.50	\$374.50	\$397.50	\$432.50
Dealers Cost .....	232.35	248.90	268.15	287.50
Distributors Cost .....	192.25	205.50	221.80	237.30
Manufacturers Cost Delivered ...	159.05	166.67	187.43	195.92
Sales and Excise Tax .....	13.97	14.95	43.61	46.72
Total Cost Delivered .....	\$173.02	\$181.62	\$231.04	\$242.64
(B) Percentage Markup				
Dealer to Consumer .....	48.27%	50.46%	49.24%	50.43%
Distributor to Dealer .....	20.86%	21.12%	20.90%	21.15%
Manufacturer to Distributor ....	11.11%	13.15%	4.00%	2.20%

Note: (1) Manufacturer's Cost does not include expenditures of a capital nature, interest, or income taxes;

(2) Manufacturers Costs after tax increase do not reflect the current situation caused by progressive decline in volume and increases in costs of labor and material.

E. & O.E.

November 29, 1951.

## COMPANY "E"

January-June 30, 1950

List (including 8% sales tax) .....			\$ 86.50	
Distributors' 40% and 10% equal ..	\$39.79	Balance	46.71	
Freight allowance equals .....	.96	"	45.75	
Sales tax 8/108 equals .....	3.39	"	42.36	(Manufacturer's net income)
Manufacturer's cost for period ....			34.75	
Manufacturer's profit .....			\$ 7.61	

May-October, 1951

Suggested list of (includes 10% sales and 15% excise) .....			\$100.00	
Distributors' 40% and 10% equal ..	\$46.00	Balance	54.00	
Freight allowance equals .....	1.08	"	52.92	
Sales tax 10/125 equals .....	4.23	"	48.69	
Excise tax 15/115 equals .....	6.35	"	42.34	(Manufacturer's net income)
Manufacturer's cost for period ....			42.17	
" profit 17¢ (or) ....	.17%			
Suggested list price (10% sales and 25% excise) .....			\$107.85	
Distributors' 40% and 10% equal ..	\$49.61	Balance	58.24	
Freight allowance equals .....	1.08	"	57.16	
Sales tax 10/135 equals .....	4.23	"	52.93	
Excise tax 25/125 equals .....	10.59	"	42.34	(Manufacturer's net income)



May-October, 1951—Concluded

Manufacturer's cost for period ....	42.17
“ profit 17¢	
This company reports a third quarter loss in 1951 .....	\$ 9,896.66
“ “ “ Oct. 1951 loss .....	3,298.88
Loss July-Oct. inclusive .....	13,195.54

## COMPANY “F”

Average Net Profit for 1950  
8.7% on sales

(range on various appliances from 6.5% loss to 14.2% profit)  
after tax increase—Spring 1951  
average loss 7.7% on sales  
Electrical Appliance

(Suggested list) Dealer receives from consumer .....	\$13.95
Distributor receives from dealer .....	9.30
Manufacturer receives from distributor .....	7.53
Less tax and transportation .....	.87
Manufacturer's net f.o.b. ....	6.66

1950 cost \$6.03 — net profit per unit 63¢.

At present time cost in own warehouse \$7.17 — loss per unit 51¢.

## COMPANY ‘G’

Discounts to Retail Dealers  
from Manufacturer's Suggested Retail Prices

	Minimum Discount	Maximum Discount
Refrigerators .....	27%	36%
Ranges .....	25	35
Washing Machines .....	30	38
Small Appliances .....	25	40

This manufacturer sells his large appliances direct to dealers, and not through distributors. He gives distributors a discount of 46 per cent on small appliances.

His variation in dealing discounts between minimum and maximum are based on the following factors:

1. A lesser discount on low-priced utility models.
2. The volume of the dealer's purchases.
3. The efficiency of the dealer in sales promotion, sales training, store location, and in recognition of expenses incurred therein.

November 29/51

## JOINT COMMITTEE

## COMPANY 'G'

Profits earned during the years 1949 and 1950 and 10 months of 1951  
on Appliances

*expressed in per cent of manufacturer's selling price*

Federal plus Provincial Income Tax on Corporation taxable income was 40 per cent in 1949, 41.6 per cent in 1950, and is 52.6 per cent in 1951.

	Net profit before income tax expressed in % of sales (10 mos.)			Net profit after income tax expressed in % of sales (10 mos.)		
	1949	1950	1951	1949	1950	1951
Refrigerators .....	0.7	5.1	1.0	0.42	3.0	0.5
Ranges .....	10.1	13.1	6.9	6.1	7.7	3.3
Washing Machines ....	14.3*	5.5	5.4	*	3.2	2.6
Other Appliances ....	11.5	11.2	10.6	6.9	6.5	5.0
TOTAL ALL APPLIANCES .....	4.5	7.4	4.1	2.7	4.3	1.9

\* (loss).

November 29/51

## COMPANY—"K"

This Company does not sell through Distributors.

*Ranges*

	Cost	Average Selling Price	Consumer List
January 1, 1951 .....	\$162.52	\$183.58	\$274.00
November 30, 1951 .....	216.21	213.73	319.00

*Refrigerators*

	Cost	Average Selling Price	Consumer List
January 1, 1951 .....	\$192.85	\$233.83	\$349.00
November 30, 1951 .....	244.40	247.23	369.00

## COMPANY "L"

*Electric Kettles*

	Cost	Selling Price	Jobber's Price	Consumer List
January 1, 1951 .....	\$10.14	\$8.27	\$10.33	\$15.50
December 1, 1951 .....	11.86	8.80	11.00	16.50

It is felt that within the short time given, sufficient factual information is submitted herewith to prove, as stated to the Joint Committee, that profits in the Appliance Industry to put it mildly, have not been unreasonable. It is hoped that the presentation of these figures will assist the Committee in its recommendation on "Resale Price Maintenance."

Yours very truly,

B. NAPIER SIMPSON,  
General Manager.

B. Napier Simpson.  
ds.

## COMPANY "M"

AMOUNT RETAINED BY MANUFACTURER FROM EACH DOLLAR SALE  
TO DISTRIBUTOR BY PRODUCT

Product	Year 1950			Year 1951 to date		
	Net before Income Taxes	Deduct Income Taxes	Net Retained	Net before Income Taxes	Deduct Income Taxes	Net Retained
A .....	.228	.095	.133	.230	.115	.115
B .....	.235	.098	.137	.223	.112	.111
C .....	.120	.050	.070	.130	.065	.065
D .....	.084	.035	.049	.076	.038	.038
E .....	.003	.001	.002	.082	—	.082
F .....	.217	.091	.126	.213	.107	.106
G .....	.243	.101	.142	.182	.091	.091
H .....	.207	.086	.121	.176	.088	.088
I .....	.035	.015	.020	.391	—	.391

AMOUNT RETAINED BY MANUFACTURER FROM EACH DOLLAR SALE  
TO CONSUMER BY PRODUCT

Product	Year 1950			Year 1951 to date		
	Net before Income Taxes	Deduct Income Taxes	Net Retained	Net before Income Taxes	Deduct Income Taxes	Net Retained
A .....	.118	.049	.069	.123	.062	.061
B .....	.121	.050	.071	.117	.059	.058
C .....	.061	.025	.036	.070	.035	.035
D .....	.044	.019	.025	.040	.020	.020
E .....	.001	.0005	.0005	.041	—	.041
F .....	.115	.048	.067	.116	.058	.058
G .....	.135	.056	.079	.099	.050	.049
H .....	.144	.060	.084	.099	.050	.049
I .....	.019	.008	.011	.136	—	.136











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HOUSE OF COMMONS

Fifth Session—Twenty-first Parliament  
1951

(Second Session)

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JOINT COMMITTEE OF THE SENATE  
AND THE HOUSE OF COMMONS

ON

COMBINES LEGISLATION

Joint Chairmen—The Honourable Senator A. L. Beaubien  
Mr. James Sinclair, M.P.

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MINUTES OF PROCEEDINGS AND EVIDENCE

No. 12

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TUESDAY, DECEMBER 4, 1951

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WITNESSES:

Mr. R. B. Taylor, Chairman, Legislative Committee, Canadian Manufacturers Association; Mr. G. R. Bradley, Director of Merchandising, Peak Frean (Canada) Limited; Mr. R. L. Linton of Sisman and Company, Aurora, Ontario, all representing the Canadian Manufacturers Association.

F. A. McGregor, Esq., C.B.E.

#### ADDENDUM

*Minutes of Proceedings and Evidence, Monday, December 3, 1951:*

*In attendance:* Mr. Thos. N. Phelan, K.C., and Mr. Guy Favreau,  
Counsel for the Committee.

## MINUTES OF PROCEEDINGS

TUESDAY, December 4, 1951

The Joint Committee of the Senate and the House of Commons on Combines Legislation met at 10.30 o'clock a.m. The Joint Chairmen, The Honourable Senator A. L. Beaubien and Mr. James Sinclair, M.P., were present, Mr. Sinclair presiding.

*Also present:*

*For the Senate:* The Honourable Senators Burchill, Golding, Hawkins, Horner.

*For the House of Commons:* Messrs. Beaudry, Blair, Boucher, Carroll, Carter, Cauchon, Croll, Dickey, Fleming, Garson, Harrison, Hees, Jutras, MacInnis, Mott, Murray (*Oxford*), McLean (*Huron-Perth*), Shaw, Stuart (*Charlotte*), Thatcher.

*In attendance:* Mr. Thos. M. Phelan, K.C., and Mr. Guy Favreau, Counsel for the Committee; Mr. R. B. Taylor, Chairman, Legislation Committee, Canadian Manufacturers Association; Mr. G. R. Bradley, Director of Merchandising, Peak Frean (Canada) Limited; Mr. R. L. Linton, of Sisman and Company, Aurora, Ontario; all representing the Canadian Manufacturers Association.

Miss Margaret P. Hyndman, K.C., addressed the Committee, urging that a hearing be granted the representatives of the Canadian Retail Merchants Association.

The Chairman explained that a decision on this matter had already been made by the Committee.

Mr. Taylor was called, tabled a brief on behalf of the Canadian Manufacturer's Association, which is printed as *Appendix A* to this day's Minutes of Proceedings and Evidence, was heard and questioned thereon.

Messrs. Bradley and Linton were called and questioned.

The witnesses retired.

At one o'clock p.m. the Committee adjourned until 3.30 o'clock this day.

### AFTERNOON SITTING

The Joint Committee resumed at 3.30 o'clock p.m. The Joint Chairmen, The Honourable Senator A. L. Beaubien and Mr. James Sinclair, M.P., were present, Mr. Sinclair presiding.

*Also present:*

*For the Senate:* The Honourable Senators Burchill, Fogo, Golding, Hawkins, Horner.

*For the House of Commons:* Messrs. Beaudry, Blair, Boucher, Carter, Cauchon, Croll, Dickey, Mrs. Fairclough, Messrs. Fulton, Garson, Harrison, Hees, Jutras, MacInnis, Mott, Murray (*Oxford*), McLean (*Huron-Perth*), Shaw, Stuart (*Charlotte*), Thatcher.



*In attendance:* F. A. McGregor, Esq., C.B.E.

Mr. MacInnis moved that the 10 minute rule relating to questioning by one member, adopted on November 26, be strictly adhered to.

And the question having been put on the said motion, it was agreed to.

Mr. McGregor was called, heard and questioned.

At 4.27 o'clock p.m. the proceedings were interrupted by the division bell in the House of Commons.

At 4.50 o'clock p.m. the Committee resumed.

The witness retired.

In accordance with the recommendation contained in the Fourth Report of the Sub-Committee on Agenda and Procedure, concurred in on November 30, the following documents are printed as appendices to this day's Minutes of Proceedings and Evidence:

*Appendix B:* Brief submitted to the Committee by the Canadian Federation of Agriculture.

*Appendix C:* Brief submitted to the Committee by the Canadian Association of Radio and Appliance Dealers.

*Appendix D:* Brief submitted to the Committee by the T. Eaton Company, Limited.

At 6.00 o'clock p.m. the Committee adjourned until Wednesday, December 5, at 3.30 o'clock p.m.

A. L. BURGESS,  
*Clerk of the Committee.*

## EVIDENCE

DECEMBER, 4, 1951

10:30 a.m.

The CHAIRMAN: Gentlemen, come to order.

This morning we are going to hear from representatives of the Canadian Manufacturers Association. Their brief was circulated to you about a week ago. If members want a copy there are other copies here.

Will the representatives of the Canadian Manufacturers Association come and sit at the table?

Miss MARGARET P. HYNDMAN, K.C.: Before you start taking evidence may I address the committee on a point of procedure. I appear on behalf of the Retail Merchants Association of Toronto and I was requested yesterday afternoon by Mr. Thomson, vice-president, St. Catharines, to say that he is very anxious to be heard by this committee, that he had sent a telegram to Mr. Garson, asking if there was any way to arrange for his appearance before the committee; and, if I might, I would like to read Mr. Garson's telegram to him:

Garson wired today as follows. Mr. Boisseau was advised that the agenda subcommittee of the joint parliamentary committee appointed to consider combines legislation had decided time did not permit hearing representatives from his organization. This decision I understand was made in view of the fact that his organization had filed a brief and that the Canadian Retail Federation of which it is an affiliate had three hearings before the committee. It was considered that the thorough presentation by the Retail Federation covered the points raised by the Retail Merchants Association. This same procedure followed by committee in respect of other organizations in order to avoid duplication and repetition of argument. However I am advised in view of the urgent representatives made by Mr. Boisseau last week it was agreed to hear representations from your organizations along with the Canadian Retail Federation on November 30 but after this concession granted it was rejected by your organization. Previous correspondence to which you refer makes it clear that after appointment of parliamentary committee briefs and representations were to be directed to it and since a committee is master of its own procedure regret am unable to intervene Stuart S. Garson, Minister of Justice unquote since proposed legislation is of tremendous importance to our membership of approximately 20,000 across Canada we urge you to do everything possible to endeavour to persuade the committee to postpone conclusion of its hearings in order that our representatives can be heard.

J. R. THOMSON, Vice-President,  
Dominion Board, Retail Merchants  
Association of Canada Inc.

The CHAIRMAN: Miss Hyndman, may I point out that it is a rather extraordinary procedure that a point of order should be raised by people who are not members of the committee, and the answer to what you have just read is very similar to the ones Senator Beaubien and myself have addressed to

a great number of groups who have not filed briefs, although the Retail Merchants' Association of Canada did file a brief and asked to be heard here. The procedure has been that we would accept briefs as considered statements of opinion from any groups in the country who are interested. It is the experience of every parliamentary committee dealing with a matter of wide national concern that they are flooded with representations. The group you are representing has submitted a brief. In the three sessions when the Retail Federation was before us we certainly explored every point raised by the Retail Merchants' Association of Canada, and with all due deference to you, because of your sex, I may say I have never been on a committee before where a person who is not a member raised a point of order. The group you represent have answers both from the Minister of Justice and from the Joint Chairmen of the Committee. I think any further point as to who is going to be heard before this committee will be decided by the steering committee.

Miss HYNDMAN: I am sorry if you thought I was raising a point of order. I know I have no right to do that although your reference to my sex would make me wish I had the right to raise a point of order.

The CHAIRMAN: I would have cut you off as soon as you started if you had not been a lady.

Mr. THATCHER: How many retailers does this lady represent?

Miss HYNDMAN: Approximately 20,000 and they are the small ones.

Mr. THATCHER: Do you not think it shows that we are trying to rush things a little too fast, Mr. Chairman?

The CHAIRMAN: This is a matter which has already been discussed by the committee and I do not think we should spend much time on it again. This is a problem of very great national concern, and provincial groups, local groups and national groups are all very interested, but if we are going to prolong the hearing for months and months to hear everybody who feels it is his democratic right to appear before the parliamentary committee, we will never reach the end.

We have indicated the procedure we are following; we have received briefs, we have circulated them and studied them. Those who could not afford to turn out 75 copies of their briefs had them turned out by the committee. So far we have received only two of that kind, and I won't say they couldn't afford to turn out 75 copies, and we have had them printed and they will be in today's proceedings, I expect. When a committee's procedure is to be changed it cannot be changed on a motion by a member who has previously voted against the motion to adopt the procedure.

Mr. THATCHER: Do you mean I cannot make a motion?

The CHAIRMAN: I am very grateful that your colleague next to you drew this point to my attention, as did the Clerk of the House.

Mr. THATCHER: I will make the motion anyway.

The CHAIRMAN: I rule your motion out of order, since you already made a similar motion that was turned down.

Mr. THATCHER: I did not make a motion that this lady be heard. I move that this lady, who represents 20,000 retailers be heard by this committee.

The CHAIRMAN: Mr. Thatcher's motion is a reversal of the rule set by the steering committee. We had decided that we would only hear from affiliated organizations who dissented from the views of their national associations. We received no brief from any retail group which dissented.

I do not want to read you the whole report on that, Mr. Thatcher, but I would refer you to page 457 of our official report where you will see what was determined by the steering committee. I direct your attention especially to



paragraphs 1, 2 and 3. In view of that decision which has already been confirmed on at least two occasions to the Retail Merchants Association of Canada, and which was made clear to the president of the Canadian Retail Federation when he was here, and in view of the fact, also, that we have had three sittings with the representatives of the Canadian Retail Federation, I think we will proceed with our order of business.

Miss HYNDMAN: I was not asking that I be heard. I was asking that Mr. Thomson of St. Catharines be allowed to give his evidence; and in spite of the decision that was made he was informed that he could appear, but he did not get the message in time.

The CHAIRMAN: That was when the secretary of his association telephoned here, and the Canadian Retail Federation said yes; they had three or four other representatives sitting here, and he could have sat in with them.

Miss HYNDMAN: He is asking permission to give his evidence tomorrow, evidence that you apparently were willing to hear last week.

Hon. Mr. HORNER: He was given that permission last week?

The CHAIRMAN: He was told that he could join with the representatives of the Canadian Retail Federation, and the Canadian Retail Federation could have brought him along.

Hon. Mr. HORNER: The lady just said he did not get the message in time to appear.

Miss HYNDMAN: And it is not on behalf of the Canadian Retail Federation he wants to give evidence, it is on behalf of the Canadian Merchants Association.

The CHAIRMAN: We have read many briefs, and there was no point raised in any of those briefs which was not raised either in the briefs of the Canadian Retail Federation or in the very able evidence given by Mr. Harris and his associates here. This committee is not here to hear repetition and repetition. We have made our decision, and I thank you for appearing.

Miss HYNDMAN: I am in your hands, but my client felt that he had something important or different to say, or he would not want to come and say it. That is all.

The CHAIRMAN: There isn't one person who has written to this committee who has not had the same feeling. It is quite a common feeling among people who are interested in things.

Mr. Phelan, Committee Counsel, will now examine representatives of the Canadian Manufacturers Association who are here today. Mr. Taylor, would you introduce yourself and the representatives who are with you.

**Mr. R. B. Taylor, Executive Vice-President, General Steel Wares Limited, Chairman of the Legislation Committee of the Canadian Manufacturers Association, called:**

The WITNESS: I have with me Mr. G. R. Bradley, Director of Merchandising, Peek Frean (Canada) Limited, and Mr. R. L. Linton, of Sisman & Company, Aurora, Ontario, who will be glad to answer your questions or assist me in answering questions.

The CHAIRMAN: The members have all studied your brief, Mr. Taylor, and if you care to give a brief summary of it—not to read it, because we have read it—then our counsel will conduct the opening examination, and then you are in the hands of the members of the committee.

The WITNESS: In favouring resale price maintenance for lines that are suitable, manufacturers are thinking primarily of themselves. Not to relieve

themselves of competition because all of the opponents of resale price maintenance, so far as I have read their briefs and evidence, agree that there is plenty of competition at the manufacturer's level. The reason manufacturers favour resale price maintenance is to preserve competition. We want there to be many retailers to buy our goods, not just a few. We do not want to be in a position where we are dependent on a few large retailers for our business, because when that comes about they will have us at their mercy. It is perhaps of little consequence to you if manufacturers are at the mercy of retailers, but if you think a retailer with a monopoly won't also hold up the consumer you are mistaken. It is too bad you cannot inquire into the profit margins taken on lines which are not subject to resale price maintenance when, because they are imported or otherwise, there is a monopoly.

The prohibition of resale price maintenance will force independent retailers out of business and force manufacturers into the retail business. I do not think there is any doubt of that. There will be less not more competition than there is now. There will be resale price maintenance and prices will be higher not lower.

Dr. Forsey's testimony on the subject of competition illustrates the general rule that people see their own problems very clearly but incline to feel that other people overemphasize their problems. They can see excellent reasons why their own group should not be subject to unrestricted competition in what they have to sell but have great doubt there should be any restriction on competition in what they require to buy.

It is not the full truth to say that in one case we are talking about humanity and in the other about inanimate objects such as refrigerators or stoves. We are not representing the case of the refrigerator aggrieved at its price being cut. We are speaking for the human beings who make and sell refrigerators and we believe we are speaking in the best interests of the human beings who buy refrigerators.

If resale price maintenance is prohibited Dr. Forsey seems to assume the simple situation that one store will adopt one price level and another store a different price level more or less permanently so that a housewife will know that the price of a certain article in store A is \$1 and in store B is 90 cents. There will be nothing nothing permanent about these prices. If store A finds its sales dropping it may try to get its trade back by also going down to 90 cents or even 85 cents. If store B finds it is not getting enough extra business to compensate for reducing the price it will soon put it up again. The housewife, to be sure of getting the best price, has to shop both stores every time she makes a purchase and in most cases it will not just be two stores. Just think of how many stores you would have to visit in Montreal or Toronto to be sure of getting a radio at a good price if every retailer set his own price independently.

It appears from the Canadian Congress of Labour and other representations there is a general impression that a retailer can select a location and method of merchandising which requires a margin of say 40 per cent or, alternatively, can select an inferior location, have a smaller, plainer store, employ fewer sales people and thus require only 30 per cent margin. This would be true if he could obtain the same volume in both cases. Generally, however, the first merchant with his better located and better equipped store will sell far more goods. His revenue is not a percentage but a percentage multiplied by his volume and with his higher volume he needs no more percentage, sometimes less than the other fellow. The retailer with a cheap store in a cheap location needs, in most cases, a high margin to compensate for his lower volume.

Mr. Chairman, I think the committee here should seriously consider before passing this law that they are introducing a new principle into the Combines Act; namely, that an act is a crime even though it cannot be proved that it has been or is likely to be detrimental to the public.



The phrasing in the Combines Act that an act is a crime if it is likely to be of detriment to the public must surely refer to the particular acts before the court at that time. It is certainly a very serious thing to take something and to declare it a crime without any proof having been adduced that it is a crime and that although pretty generally admitted at most it could only be objectionable in a minority of cases or at least only in some cases.

This law is a new departure. So far as we are aware there is no such law in any other jurisdiction and we suggest the utmost caution.

The Canadian Manufacturers' Association has, Mr. Chairman, no knowledge of prices or costs of its members. I have, however, naturally, a knowledge of prices and costs in our own business. In our own business, I mean my company's business, we sell a large volume of goods on a price maintained basis but we sell a larger volume of goods on which we do not maintain the resale prices. It may be of interest to the committee to know that our margin of profit on the price maintained merchandise is substantially lower than it is on the goods that we sell without price maintenance at the retail level.

Thank you, Mr. Chairman.

The CHAIRMAN: Thank you, Mr. Taylor.

*By Mr. Phelan:*

Q. What is your business, Mr. Taylor? You are in the producing business?—A. We are manufacturers and wholesalers.

Q. Of what commodities?—A. Of all kinds of housewares, manufacturés in porcelain enamel, copper, cast iron, aluminum, tin, of milk cans, hot water tanks; of all kinds of stoves and furnaces; electric and ice refrigerators; institutional kitchen equipment and many other lines.

Q. Can you tell me briefly what groups are in the price maintained field and what are not?—A. Yes, sir. Articles in the price maintained field are stoves of all kinds, electric and ice refrigerators, one class of kitchenware, and what we call a traffic item in the electrical business, that we manufacture. All those.

Q. So, apparently the larger items are those which are price maintained, are they?—A. Yes, sir, mainly that is true of our business.

Q. What percentage of your total business would you say is price maintained, just roughly speaking?—A. Somewhere around 37 per cent.

Q. About 37 per cent is price maintained. Directing your attention for a moment or two to your brief, I notice that you say on page 1 that resale price maintenance does not make prices higher. In your judgment, are there any exceptions to that general statement?—A. No, sir, I do not know of any.

Q. You do not know of any. Well, it seems to me we had a good example yesterday. Let me put this question to you. Where a manufacturer runs into a period of reduced demand as some have at the present time, I suppose the manufacturer has two choices open to him. One would be to reduce his price and enlarge the field of purchasers and the other would be to reduce his production and maintain his price. Which practice would you follow?—A. Well, sir, I think I can be factual in that. We, in our business, are going through such a period now and what we have done is that we have reduced prices in one way or another.

Q. In one way or another?—A. Yes, sir.

Q. In all lines?—A. No, sir. We have on the lines most severely affected.

Q. Have you reduced production in some lines and still maintained your prices?—A. We have done so in some lines.

Q. Well, would you consider that an exception to your general statement that resale price maintenance does not make prices higher? Because, I suggest to you in these places where you have reduced production and maintained



prices you have made them higher to the public? Do you agree with that suggestion first of all?—A. No, sir. In answering your question as you gave it to me we cannot see that we can reduce prices in every case when it would mean bringing our prices below cost.

Q. No, I am just putting a different problem to you. If you reduce production and do not lower prices is not that one method of keeping prices up to the public?—A. Yes, it would have that effect.

Q. I am simply saying to you, if you reduce production and do not lower prices is that not one method of keeping prices up to the public?—A. Yes, it would have that effect.

Q. Then in the case of the dealer who happens to have a large supply of resale price maintained goods on hand and meets the situation I have just described to you, it prevented him reducing his price in order to get rid of that supply?—A. In our business at the present time I do not think any retailer is bothered by the manufacturer. Retailers in our line are having a hard time moving merchandise and are reducing prices and using every other possible device to do so, and we are certainly not interfering with them in any way.

Q. Is that common with all manufacturers who deal on a resale price basis?—A. According to our information it is.

Q. Then we turn to the next page of your brief, page 3. Before I come to that let me deal with this other situation. Leaving aside for the moment the situation where there is a sudden reduction in demand—just leaving that aside and dealing with the situation where all retailers are average and sell the same article at the same price—do you realize as far as the consumer is concerned that does not take into account the margin of cost on which retailers do their business?—A. Our experience has been that there are no significant differences in the margin required by various retailers. There may be a difference in the margin required by a retailer in the drug business and a retailer in the electrical appliances business.

Q. I am speaking of the same article, two dealers selling the same article at a maintained price. Did you find between the two retailers there are substantial differences in their costs by which those retailers do their business generally?—A. No, sir, I did not find that.

Q. Let me call your attention to certain figures given by the Dominion Bureau of Statistics. I find here the following results for 1949: first of all we will take something along your line, the hardware business, and arriving at these conclusions the department has divided the distributors into four groups and eliminated the highest and lowest group so as to avoid unfair conclusions, and they have taken only the two middle groups. In the hardware field they find that the difference in cost averages between 11.8 and 19. Would that be your experience in the trade?—A. Yes, sir, I would say in the hardware business there is room for a difference.

Q. There are articles where the price is maintained and the first man sells at 11.8 and is forced to sell at the same price as the man who is selling at 19 per cent.—A. I would hardly credit there would be that difference in the retail of certain articles on which we maintain prices.

Q. I am dealing with the hardware business generally. The man who sells at 11.8 and has to maintain his price is in some position of disadvantage to the man who sells at 19?—A. In the hardware business we do not attempt to ask him to maintain prices.

Q. I am putting to you the situation in the hardware business where a man is selling certain goods at a fixed retail price.—A. I am answering that we only attempt to fix resale prices where we think there is no significant difference in retailing cost.

Mr. FLEMING: Is there anything in that issue of the Dominion Bureau of Statistics to indicate in these cases quoted the statistics on resale price maintained products?

Mr. PHELAN: We know the hardware business has certain articles price maintained.

Hon. Mr. GARSON: This witness has just said so.

The WITNESS: In 99 per cent of the lines we sell in hardware stores we do not maintain prices.

*By Mr. Phelan:*

Q. I am quoting from the report of the Dominion Bureau of Statistics for 1949, marked E-15. Let me take another one, not in your line, but ask you if in your experience generally in the manufacturing trade it is correct? In the case of automobile accessories there is a differential of 16·5 and 28. Would you have any comment to make on that finding?—A. No, sir, I do not know that business.

Q. Drygoods is not your business, what have you to say about that?—A. Certainly there may be a differential.

Q. According to the Dominion Bureau of Statistics the differential in the metal group is 10·1 to 16·7. Have you any comment to make on that?—A. No, sir, merely to point out there is no indication to what extent retail price maintenance applies in these circumstances.

Q. We have to use our own judgment on that, I suppose. In the Dominion Bureau of Statistics report for 1949, paragraph D-10, in plumbing and heating supplies we find a differential of 9·4 to 14·7; in piece goods it is 9·6 to 17·3; tobacco and confectionery 4·2 to 7·6; groceries 5·6 to 8·4, so there is a substantial difference in the costs that the retailer experiences if these figures are correct?—A. Yes, sir, I would like to point out I am not familiar with these figures and I do not know on what basis they are made up. We certainly do not find any evidence of such a wide difference in our business. Are these taken across Canada?

Q. These are taken across Canada, as I understand it.—A. With our own products there happens to be a 5 per cent difference in freight rates in western Canada and eastern Canada, and furthermore in large stores there is a tremendous difference in the cost of doing business compared to the small retail store.

Q. Who pays the freight?—A. The retailer.

Q. That would be reflected as part of his cost?—A. Yes. It is the usual practice in western Canada to maintain prices more than it is in the east.

Q. Well, I have given you the references now and you can check the figures if you like. Do you suggest this to the committee, that the difference in cost is one that ought not to be passed on to the consumer if the distributor or retailer sees fit to pass it on? Should the retailer or distributor be at liberty to pass on a portion of that differential to the purchaser if he sees fit to do it?—A. Sir, we felt that it would not be a case of the retailer passing on the minor differences, and I think they would be minor differences. It would be a case of certain retailers selling these goods below the full cost and making a football out of the thing.

Q. My question did not involve making a football out of anything, it is a simple question. Are you suggesting to this committee that the retailer ought to be prohibited by private arrangement with the manufacturer from passing on part of that differential if he wants to do it; do you think he should be prohibited or should he be free to do that?—A. I think the consumer should be asked to pay a fair price and should not be penalized because the retailer's costs are abnormally high.

Q. What is your opinion as to whether the retailer should be free to pass on a portion of that margin if he sees fit to do it?—A. I do not think he should be free to injure the manufacturer who sold him the goods.

Q. How would that injure the manufacturer if he passed on part of his profits?—A. If the retailer is free to cut prices the large ones are going to make it unprofitable for the small retailers to carry your line and you will not get distribution.

Q. Under the present system of retail price maintenance we have this situation, that the smaller dealer and the less efficient dealer gets the same margin of mark-up that the larger and more efficient dealer gets?—A. Not necessarily.

Q. Let me quote the figure I gave you a moment ago; a man whose costs are 11.8 as compared to 19—now, that man must sell at the same price as the man who is getting 19?—A. It doesn't mean he has the same mark-up.

Q. He sells at the same price?—A. That is right.

Q. I suggest to you the system is entirely inelastic in that it gives the same benefit to the man whose mark-up is 19 and the man whose mark-up is 11.8.—A. It is certainly not the experience in any business I am familiar with.

Q. Apart from experience, I am speaking of what might be assumed to be the results of the system. It would be an entirely inelastic system that would give the less efficient man the same subsidy that it gives a man who is selling and making a higher margin of profit.—A. I think, sir, if we had the situation in any line with any significant number of retailers getting a higher margin than they needed, the manufacturer would discover that and hasten to reduce the margin. The manufacturer is not interested in bonusing the inefficient retailer.

Q. That is the effect of it, isn't it? If we have a differential between the cost to the efficient dealer and the inefficient dealer, the inefficient dealer is getting a bonus?—A. From the manufacturer's standpoint whatever the retailer gets comes out of the manufacturer.

Q. I do not know whether I am not making my questions clear to you, but you are not answering them. I say that under the present system the least efficient gets the same bonus as the most efficient?—A. Not necessarily, he may not buy at the same price.

Q. What do you mean by that: the price is maintained legally?—A. The price that is maintained is the selling price, not the cost price.

Q. There is a differential on cost price with quantity buying?—A. Quantity buying would certainly have a great deal to do with it.

Q. Take a situation where two dealers are buying the same quantity, at the same price, and assume they are doing business at a different cost level.—A. I think that is largely an imaginary situation.

Q. Just be patient for a minute. The man who has the greatest efficiency gets the same benefits and advantages as the man who is least efficient. You can answer that yes or no. The question is: the man who is least efficient gets the same bonus as the man with the highest efficiency?—A. I think it is one of those questions that cannot be answered by simply saying yes or no.

Mr. HEES: Mr. Chairman on a point of procedure, I would like to say I think Mr. Taylor is being treated like a criminal here.

The CHAIRMAN: I have heard the committee counsel ask the same question three times. Every member knows and every housewife in the country knows that there are some efficient and some non-efficient stores.

Mr. HEES: I object to the way it is being done.

The CHAIRMAN: The witness has not yet answered the question.



Mr. HEES: He hasn't had a chance to answer him; he hasn't had a chance to talk. I do not object to the question, I object to the way it is being put and he is being treated like a criminal.

Hon. Mr. GARSON: Just because it is unpalatable to my hon. friend he doesn't have to take that attitude.

Mr. FLEMING: It is whether yes or no is a complete or truthful answer. The witness has said quite frankly that the questions Mr. Phelan has put do not permit the use of a yes or no answer and has also made the further observation that the basis on which this last line of questioning has proceeded is imaginary. Now, if this is a hypothetical question the witness is under no obligation whatever to proceed on a hypothetical basis, and it is not fair to accuse him of trying to avoid answering questions.

The CHAIRMAN: Mr. Fleming, the question Mr. Phelan asked is a question in the mind of every member of this committee other than perhaps one. Every one of us knows that some shops will operate efficiently and some will not. Far from being imaginary I think most members would like to answer the question themselves. The witness should answer yes or no or qualify it.

Mr. HEES: All I suggest is that he be given the chance to answer without being cut off.

The CHAIRMAN: The only time he was cut off was on the last question. This is the third time Mr. Phelan has put the question and has not received an answer.

Mr. FLEMING: You are getting away from your function as chairman. I suggest what we are interested in here is trying to be fair in our own judgments and fair to the people giving evidence here. We will judge whether the witness has given full evidence on that, but I think it is most unfair for anybody in this committee to suggest a witness is trying to avoid answering questions. You say the question should be answered yes or no.

The CHAIRMAN: I did not say that.

Mr. FLEMING: You are suggesting that.

The CHAIRMAN: I am not suggesting that.

Mr. HEES: Let him give an answer.

The CHAIRMAN: One purpose for having counsel was that counsel could ask questions that were generally in the mind of the committee. One of the reasons for having counsel was to speed up the proceedings of this committee.

Mr. THATCHER: Why didn't he ask McGregor questions?

The CHAIRMAN: The reason he did not ask Mr. McGregor questions was that every member of the committee was given the opportunity of questioning him. The purpose of having counsel is to speed up proceedings because some members of this committee are not stalling. In earlier questioning witnesses have agreed there is a difference in cost of operation between merchants having the same volume. Mr. Phelan asked the question three times and he was given no answer. As chairman, I think I am the judge as to what are proper questions. This is the third time the question has been asked.

Mr. PHELAN: I will let the witness say he cannot answer yes or no and leave it to the judgment of the committee.

Mr. HEES: Mr. Phelan, you cut him off when you immediately start another question.

Mr. FLEMING: May I suggest the witness be allowed to make his comment?

The WITNESS: I appreciate this is a very vital and important question Mr. Phelan is asking me and I think there may be in the minds of many people the idea that the way price maintenance works is that the margin

allowed an inefficient retailer is sufficient to show him a profit and that consequently it shows an unnecessarily high profit to the efficient retailer. I do not think that is the actual case, and I think you would find in actual practice that an inefficient retailer is not making money on his price maintained merchandise, and that an efficient retailer is not making an abnormal profit, but is making a normal profit and that is all. The manufacturer regards the mark-up he allows the retailer as something that comes out of him, not as something that comes out of the public, and he is not going to allow retailers any larger margin of profit than is necessary to keep efficient retailers in business.

*By Mr. Phelan:*

Q. Is that your complete answer, Mr. Taylor?—A. Yes, sir.

Q. So I would be wrong in my conception that resale price maintenance had something to do with trying to keep inefficient retailers in business?—A. Certainly you would, sir. Manufacturers cannot afford inefficient retailers.

Q. The next thing I would like to draw your attention to is on page 3 at the top of the page where you say: "The MacQuarrie committee's contrary conclusion that resale price maintenance raises prices and harmfully curtails competition at the retail level is based, it is submitted, on the assumption that the large volume retailer is necessarily more efficient than the small volume retailer." Is that your conclusion?—A. Yes, sir.

Q. As to the meaning of the MacQuarrie committee report?—A. That appeared to be their assumption, sir.

Mr. SHAW: May I ask that the witness speak a little louder because we are having trouble hearing him?

The WITNESS: I will try to, sir.

*By Mr. Phelan:*

Q. Let me read the MacQuarrie committee report statement on page 19, at the middle of the page, to see whether your assumption is warranted:

In particular, the practice represents an undue restriction on low cost distributors, because it forces each type of retailer to sell at a uniform price, irrespective of his costs. Services, which are the real products that distributors have to offer, differ both in quality and costs. To force retailers to sell these services at the same price injures the low cost distributor and the community as a whole.

Do you find anything there to indicate that the MacQuarrie committee based its conclusions on any question of efficiency or prices?—A. I find, sir, that they based their conclusion on an erroneous conception of the actual practical facts of business. They seemed to assume that most articles subject to resale price maintenance can be sold in the high priced specialty shop or can be sold in the bargain basement—and that any retailer can choose which of those methods of merchandising he wants to follow. That simply is not the case. I do not believe that Burberry overcoats could be successfully marketed in the bargain basement at any price, at any practical price. I do not believe that work clothes can be successfully retailed in a high priced specialty shop. They would not get customers.

Q. And do you still maintain the view expressed in your brief, that the MacQuarrie committee proceeded on the basis that the large volume retailer is necessarily more efficient than the small retailer? Do you still adhere to that view?—A. I thought so, sir.

Q. Do you still think so—after what I have read you from page 19?—A. I do.

Q. All right. Would you have any ideas to the total percentage of business done by members of your association on the resale price basis?—A. No, sir; I have not.



Q. You have no conception of that?—A. No.

Q. Would you agree with the suggestion that this practice has grown steadily within the trade in the last ten years or so?—A. No, sir. I have difficulty in believing that is the case.

Q. Well, we have been told here in certain trades, for example the electrical trade, that it has grown to from 80 to 90 per cent; in the beauty equipment trade to 90 per cent; in the drug practitioner's business up to 60 per cent?—A. Well, sir, my answer is based on this. In the case of those lines that lend themselves to resale price maintenance, resale price maintenance is favoured by manufacturers and dealers alike. I would therefore assume that even ten years ago or five years ago it was probably applied to any goods that were considered suitable for its application. As far as our own business is concerned we have not applied it to any fresh lines in twenty years.

Q. But the quantity of sales, in the lines you have, has increased in twenty years?—A. Yes, sir, in common with all other lines sales have increased.

Q. One other question and I am through. I wish to deal with your loss leader problem which you mention in your brief and its effect upon competition. I suppose 1929 would not be an unfair year to determine something of the effect of competition on business. I have here the report of the International Chamber of Commerce for that year, founded on Bradstreet's reports and they give this merely as to the cause of failures in 1929. Competition of all kinds, good, bad, and indifferent—3·9 per cent. That would not be a very substantial total would it?—A. No, sir.

Q. And if you take everything else except the loss leader out of 3·9 per cent you would have a pretty small percentage of failure due to loss leader?—A. Indeed you would but I am wondering whether you have selected a typical year when you select 1929.

Q. I thought it was a useful year in viewing business and economic conditions?—A. It might be, but as I remember 1929 it was a year of excellent business conditions and it had to be a pretty poor businessman indeed who went out of business in 1929.

The CHAIRMAN: Mr. Fleming is first on my list.

*By Mr. Fleming:*

Q. Mr. Taylor, in the broad lines of goods with which you are personally acquainted in your own business, what in your opinion would be the effect to the consumer of immediate elimination of resale price maintenance on all those goods which are subject to resale price maintenance? I would ask you to give your answer first on an immediate basis and, secondly, on the long term basis.—A. I think, sir, that the immediate effect would be loss leader offering of our price maintained merchandise and that would have the effect of making it unprofitable for many of our present customers to handle our merchandise. That would make us either dependent on a much smaller group of retailers or it would require us to open our own retail outlets. In either event once that loss leader selling has served its purpose, in reducing competition at the retail level, I firmly believe that those retailers left in the business would take advantage of their position to extend their margin of profit and that the upshot of this lessening of competition in the retail end of the business would be higher prices for the consumer.

Q. And how long would it take for this initial period to pass into the period where competition would be eliminated and prices would be raised?—A. I have no idea, sir, on that. I do not know that we have a typical situation. We had a case in Hamilton where lower prices were offered by a store there for a matter of a few days, and prices were then restored, I believe. We had a case in the United States where lower prices were offered for a week or two and then I understand they were restored to previous levels.



Now, we just have to imagine, Mr. Fleming, what would happen. We do not know. We cannot point to a case. The trouble is that resale price maintenance has never been prohibited anywhere, so we have got nothing on which to observe. Canada is going to lead the world, if you want to put it that way—Canada is going to lead the world in saying: Now, here is a commercial practice that is widespread and practiced everywhere but we are going to prohibit it.

Mr. THATCHER: Could I just ask a question?

The CHAIRMAN: With Mr. Fleming's permission, and it will be on his time.

*By Mr. Fleming:*

Q. Just let me continue. You have spoken of your fear that goods now subject to resale price maintenance will be seized upon to be used as loss leaders. On what ground do you put that fear—that they will be seized on for that purpose—rather than goods not price maintained?—A. Because if they desire to do it on goods which are not price maintained they would already be doing it. They are free to do it now. It is not worth their while to do it unless someone has succeeded in establishing a value in the minds of the public.

Q. So that the loss leader depends upon conveying to the mind of the public that they are getting goods at less than the price they are accustomed to paying?—A. That is right, sir.

Q. Have you considered the possibility of legislation being drafted to abolish or prohibit this practice of loss leaders? Have you looked at that suggested legislation introduced at the last meeting by Mr. Croll, for instance?—A. Yes, sir. I think I can most certainly say that any legislation which permitted a retailer to sell on a 5 per cent margin over his cost would not represent any protection to other retailers at all.

Q. What do you say, having looked at that proposed legislation, as to its practicability and enforceability?—A. I have felt that there were great difficulties in the way of loss leader legislation, because there is the matter of motive—and that is a very difficult thing to administer in court.

If a man is over stocked on goods he should be allowed to liquidate his stock. In our industry, if we find a retailer who is in difficulty we certainly never make any objection to him reducing prices and getting himself out of his difficulty.

Q. Could you make any more general comment as to the enforceability of the type of legislation we are speaking about now?—A. No. What we have seen certainly looks ineffective to us and it has thrown us back on the conclusion that the only protection that we know of is resale price maintenance.

Q. Well, Mr. Phelan this morning used the word "inelastic" as applied to the present method or practice of resale pricing. What do you say about the possibility of introducing legislation to prohibit the so-called practice of loss leaders?—A. I would have to see the proposed legislation and have a chance to study it before expressing an opinion on it. We have considered, of course, what form such legislation might take, but we have not arrived at any satisfactory suggestion. Therefore, we are thrown back, as I say, on the feeling that the only protection we know of against loss leading merchandise is resale price maintenance.

Q. You mentioned earlier in your remarks that large stores would take a wider spread than the ordinary retailer—and they pass on the burden to the manufacturer from whom they are buying. Can you be more specific as to the percentages in individual cases?—A. I would not like to talk percentages if I can be spared from so doing. I based that statement on our experience in our business in seeing the prices at which we sell them goods and their subsequent

selling of the goods—in the case of the independent dealers and the others—in seeing what they freely set their selling prices at.

Q. Do you make a practice of checking the price with Eaton's for instance, as compared with other retail outlets?—A. Yes, we do.

Q. This is a general conclusion based upon your observations of their figures?—A. Yes, sir, and other manufacturers tell me the same thing.

Q. My last point is in regard to your statement that the abolition of resale price maintenance will force manufacturers into the retail business. Can you be more specific about that so we can estimate the degree of danger or the extent to which that might become a practice on the part of manufacturers?—

A. Mr. Fleming, you are asking me to deal with a situation we have never had to face. As I see it, we would have to adopt the merchandising tactics of, for instance, the Singer Sewing Machine Company, in that we would open our own stores in various places. If you decided to buy a McClary refrigerator you would go to one of those stores, owned and operated by us. We could not possibly provide as many stores as now sell McClary refrigerators but we would try to provide enough to give us a satisfactory volume of business.

Q. What would be the effect on prices, eventually, to the consumer?—A. Well, sir, unless we proved to be more efficient retailers than the retailers in business now, the price would not be any lower. I, myself, have had a long and assorted business experience and I am a little inclined to think that there are very few people who have a talent for manufacturing and who have a talent for retailing also.

Q. Well, in short— —A. I am sure that we would not be any more efficient than the average good retailer today—and consequently we could not sell at any lower price.

The CHAIRMAN: Your last question, Mr. Fleming.

*By Mr. Fleming:*

Q. Is size a badge of efficiency in retailing?—A. No, sir. Size is not a badge of efficiency in any line.

Q. The question put to you this morning was as between the large efficient retailer on the one hand and the smaller inefficient retailer on the other hand, and I take it you are not prepared to say that is a correct reflection of existing circumstances?—A. No, sir, it is an incorrect conception.

The CHAIRMAN: Thank you, Mr. Fleming. Mr. Shaw is next.

*By Mr. Shaw:*

Q. Mr. Taylor, reference has been made to the loss leader. Would you define loss leader for us, please?—A. Mr. Chairman, I will try to do so. A loss leader, to my mind, is a case where a price is set which is below full cost, with some other motive in mind than just selling those goods.

Q. When you say "below cost" do you mean the cost to the manufacturer or the cost to the retailer?—A. Pardon me, sir, I thought your question referred to loss leaders selling at the retail level.

Q. That is fine, then your answer would apply to the retail level?—A. That is right.

Q. I am not sure you used the word "suggested" in connection with fixing prices at the retail level, but most of the associations appearing before us have used such words as "setting of suggested retail prices." Do you use that term or does the Canadian Manufacturers' Association use that term?—A. The Canadian Manufacturers' Association has nothing to do with prices or terms and never has anything to say on that subject.

Q. I will ask you as an individual manufacturer—do you call it "suggested retail prices"?—A. To be specific we call it "a list price".



Q. Now, with respect to enforcement, would you elaborate upon the previous answers you have given with respect to the enforcement of that list price at the retail level? As far as a manufacturer is concerned?—A. Well, sir, to the best of my knowledge we have never taken punitive action at any time towards any retailer.

Q. I take it, from previous answers you have given, that yours is a rather loose practice, flexible if you like to call it that, or elastic, in so far as the enforcement of resale price maintenance is concerned? Is that correct?—A. I do not think that as far as these lines we follow which are price maintained are concerned, that we would like to say they are elastic—except of course under present chaotic conditions in our industry. We are all desperate to sell goods at the moment and we are in many cases selling them at a loss and the retailer is selling them at a loss.

Q. Under so-called present chaotic conditions, I understand that you have allowed dealers to reduce prices where it was necessary to liquidate heavy inventories? Under present chaotic conditions you have done that?—A. Under present chaotic conditions that is very widespread. Under other conditions the situation would arise occasionally and we never interfere. We would think it was quite wrong to interfere with the retailer getting out of his difficulty.

Q. Are you still speaking of the so-called present chaotic conditions?—A. No, sir. I hate to call them normal times, because I have been waiting so long for normal times to arrive, but when business is a great deal better than it is at present you would occasionally find a retailer in financial difficulty and if he had to get out certainly we would not stop him getting out.

Q. Well, are you familiar with any manufacturers who are today preventing the reduction in resale prices of any commodities, even though conditions may be in some respects chaotic? Are you familiar with any manufacturers in Canada who will not permit those reductions today?—A. As far as our own industry is concerned—it is not a subject I discuss with my competitors—but my observation would be that they cannot be preventing it because it is going on in a widespread way.

Q. Would you agree in effect under present day conditions that resale price maintenance doesn't really mean very much?—A. It certainly doesn't mean much in our lines.

Q. It is not such a vital factor in your particular manufacturing business?—A. I am not thinking about today, I am hoping that these conditions are not going to last very long.

Q. You did say from time to time relaxing of conditions with regard to resale price maintenance has been necessary?—A. Yes, sir.

Q. You referred to 37 per cent of your production selling on a price maintained basis; is that dollar volume?—A. Yes.

Q. You also used the expression that some goods lend themselves to resale price maintenance: stoves, refrigerators and different types of kitchenware. Now, what do you mean when you say some of these lend themselves naturally to it?—A. I mean that in some lines you have a condition of absolute uniformity.

Q. In what?—A. In the products.

Q. You are speaking of quality?—A. Of quality and features; perhaps I mean the same thing. I mean, for example, with a model 25 McClary electric range, it is exactly the same range as near as you can make it in Mr. Jones' store and in Mr. Smith's store.

Q. Would you agree that there may be goods manufactured by your concern which are presently not price maintained but which may be put in that category as time goes on? —A. I wouldn't like to say that, although nothing is impossible. I did mention earlier that there has been no shift in our business from one category to another in twenty years.



Q. I am asking you for an expression of opinion now.—A. No, sir, as far as our own business is concerned I think it is rather doubtful that we would desire to extend the practice of resale price maintenance.

Q. If there is a trend in any direction would you say it is likely to be upward or downward?—A. It would be upward to the extent that we went into more lines of ranges and refrigerators. For example, if we went into the manufacture of deep freezers, automatic washing machines, vacuum cleaners, and so on, I think it is quite likely we would conclude those goods ought to be price maintained.

Q. As a manufacturer do you observe that there becomes a greater standardization as between similar products manufactured by one manufacturer and by another as time goes on? Do you find there is a gradual trend towards standardization and greater equality between the two products; does competition tend to do that?—A. That is another question I do not think can be answered yes or no. We all try to introduce some feature in our merchandise that no competitor has. As soon as it proves it is a desirable feature your competitor tries to get it in his product and to that extent they draw together again.

Q. In referring to the T. Eaton Company I think you criticized them; although they were in a position to indulge in mass buying they didn't as a rule pass the benefits on to the customers. Did I understand you to say that?—A. Our observation is they make more as a percentage than the average small retailer.

Q. In selling to your retailers do you provide discounts for volume purchases?—A. Yes, sir, we do.

Q. Under resale price maintenance would the benefit of mass purchases be passed on to the retailer?—A. Yes, it is the general situation that the man who buys larger volume gets lower prices.

Q. I think you are quite elastic in your policy, but in many instances there is a rigidity of enforcement. I do not want to mention any company, but would you think in such circumstances the benefits derived by the retailer from mass buying would not be passed on to the consumer?—A. If you are maintaining a price, as long as you do maintain that price, then the retailer can neither pass along to the consumer the benefits of his efficiency or the penalties of his inefficiency. I do not believe the adjective "rigid" can be fairly applied to resale price maintenance. Prices of these commodities change and they change for various reasons. You have to continually meet the competition of other manufacturers' goods and if you discover you have set your price too high you must lower it.

Q. What I was talking of was the same commodity. For example, merchant A is selling stoves which you manufacture. I am in a position to buy twelve stoves from you and maybe thus enjoy a discount in the cost. Now, under strict enforcement of resale price maintenance I would not be allowed to sell those stoves to the consumer at a lower price than John Smith in the next town who is selling possibly two. Under a strict policy of resale price enforcement that would be the result?—A. Yes.

*By Mr. Jutras:*

Q. I would like to follow the line of questioning of Mr. Fleming. A moment ago I think you intimated it was your view, and I suppose you were speaking for the manufacturers generally, that you doubted very much if the manufacturers could sell their own products more economically to the consumer themselves than under the present sept-up of distributor and independent retailer. Is that right?—A. It is not the opinion of the Canadian

Manufacturers' Association. Such a subject is hardly one we would express an opinion on. As a manufacturer I was expressing that opinion as an individual about a hypothetical condition.

Q. What I meant was in the opinion of the manufacturers generally, not your association as such. In other words, do manufacturers feel generally that the practice of using independent retailers and distributors is one that is desirable?—A. We do.

Q. Generally you do feel that this is one practice that is desirable?—A. We do indeed.

Q. Then I have a little difficulty in understanding how the practice of price maintenance is compatible with this idea of independent retailers. Once you get price maintenance established in a more general way than at the present time—for instance if a retailer handles products that are 90 per cent under resale price maintenance, do you not remove the independence from the retailer and more or less make him an employee of the company?—A. I do not think that is so. There are very few cases, and in fact I do not know of any myself where the retailer buys only the goods of one manufacturer. He generally handles the goods of a number of manufacturers and furthermore he frequently changes them. If he comes to the conclusion that manufacturer A's products can be more profitably sold by him than manufacturer B's products, he changes to manufacturer A.

Q. I appreciate your point of view, but you are thinking mostly in terms of this elastic price maintenance. I am protracting this into the future and naturally it will become, I assume, more and more rigid if it becomes more and more general. Although the price may be varied by the manufacturer the retailer is under direct instructions from the manufacturer at all times as far as his product is concerned. If 90 per cent of his lines are under price maintenance he may not be following instructions from one manufacturer but will be following instructions from ten or fifteen or twenty, or as many lines as he has, and I do not see how he would have any opportunity of doing what you say.—A. If you consider the situation is that there are twenty manufacturers who are trying to get him to buy their goods I think you will realize he is certainly going to have something to say.

Q. Under resale price maintenance?—A. Yes.

Q. Now, you said a moment ago in answer to counsel that the manufacturers could not keep inefficient retailers in business. I presume that is quite a correct statement, but my point is how can you do that under resale price maintenance?—A. Because we endeavour to set the retailer's margin at the lowest possible point.

Q. In other words, the means of doing it would be an elastic margin to the point where it would eliminate the inefficient retailer?—A. Yes, sir, that is the way it would work. We set the margin just large enough to bring sufficient returns to market our products.

Q. Yes, but you see if you do cut the margin down to the limit then do you not encourage the retailer with large volume because if you reduce the margin doesn't it become just a question of volume as far as the retailer is concerned, because if the margin is small he will have to have a large turnover?—A. No, sir, I thought I made it plain earlier but I will repeat it. The manufacturer who is trying to attain wide distribution feels that to get that he must have not a few retailers but a lot of retailers, and if he reduces the margin to the point that it became unprofitable for a considerable number of retailers to handle his products he defeats his own purpose, so he will not do that.

*By hon. Mr. Garson:*

Q. In this instance you have just given you point out that twenty manufacturers may be competing for the patronage of one retailer. Now, under a



thoroughgoing system of resale price maintenance I put it to you whether there is any other basis of that competition than the opportunities of profit for the retailer which the twenty manufacturers can offer in competition with one another?—A. I would think that is what the retailer is interested in.

Q. So these manufacturers are all competing with one another to see which can make the most profit for that retailer?—A. That is right, sir.

Q. Do you think that is a situation which is calculated to produce the best value for the consumer?—A. Well, sir, if it were the manufacturer's conception that the way to make the retailer a profit was by providing him with a big mark-up you would be quite correct. The manufacturer's conception of how to provide a profit for the retailer is to give him a line of goods at a price he can sell them at, which means he must give the retailer a reasonable price and a price which is acceptable to consumers.

Q. We had some examples the other day in the pharmaceutical trades where advertisements from their trade journals, putting them side by side, seemed to place most of the emphasis on the first part of the picture, that is the question of the mark-ups. One was offering 75 per cent profit to the retailer, another 100 per cent. It led pretty irresistibly to the conclusion that was the main basis upon which this competition took place. But would you say that was the general practice under resale price maintenance?—A. Well, sir, that is another question to which I cannot answer yes or no.

Q. Answer it any way you like or not at all if you do not want to.—A. Retailers are very sensitive on the subject of their margin and they react with great hostility to any suggestion that they ought to operate on a lower margin of profit. As I think anyone can see, the manufacturer is interested in selling his goods, he wants to produce a lot of goods and sell them, and the key to that is the price to the consumer. A short time ago we had a refrigerator priced at \$462. We thought it would expedite the sale if we reduced the price to \$419. Some of our retailers had some of these refrigerators in stock and they certainly did not like it one bit, but we felt actually we were acting in our interest as well as their interest. We felt that it would be better to sell some of these refrigerators at a smaller margin than to keep them in stock. That is the reason, as I have explained, that the manufacturer does not go around threatening to reduce retailers' margins and he is more inclined to try to use the selling point that the retailer is getting every consideration. It is very important the retailer should feel the manufacturer is sympathetic.

Q. That he is getting a large margin?—A. Not a large margin.

Mr. HEES: A reasonable margin.

Hon. Mr. GARSON: Reasonable in the sense that Mr. Hees uses the term.

*By Hon. Mr. Garson:*

Q. Now, you said earlier in your testimony that your experience with powerful retailers like the T. Eaton Company was that they were in the habit in their dealings with you of driving a pretty hard bargain and making you take a smaller manufacturer's profit than these other concerns.—A. I wanted to emphasize the wrongness of the conception that appears to have been reached by the MacQuarrie Committee and which I think a reader of the T. Eaton brief would get, that a large retailer such as Eaton's was continually kicking against the price. He is saying, "I would like to sell these goods at a lower price." On resale price maintained lines we try to keep them in line.

Q. I got the impression and I hope you will correct me if it is unfair to you, that you would prefer to do business with a group of independent retailers whose prices you could fix yourself than bother having to haggle with a tough bargainer like Eaton's. Is that a wrong impression?—A. Well, sir, I think if I have something to sell I would like to deal with someone from whom I could get the best price.



Q. I am not applying this necessarily to your firm or association, but might it not be the case that the manufacturer too was quite powerful and if the interests of the consumer were to be protected it might be well for his emissary too to be strong in bargaining power?—A. Which large manufacturer?

Q. I was not speaking of your company or any particular company, but of any manufacturing concern that was very much more powerful than an independent retailer or independent wholesaler. In this business of having prices fixed by the manufacturer, apart from the element of competition that you have to face in order to get distribution, the manufacturer fixes the price and also the retailer's mark-up, doesn't he?—A. It is better to say he fixes the price from time to time.

Q. I gather that in your negotiations with the T. Eaton Company you did not fix the price. There were two people who fixed the price there, is that right or wrong?—A. I think in dealing with any customer the question of the price you are going to charge him for the goods is certainly a thing which you discuss and if the retailer has more to offer you in the way of distributing ability he is in a better bargaining position.

Q. And that is one way by which the ultimate consumer may perhaps get a good price; is that correct?—A. Undoubtedly. It might be.

The CHAIRMAN: That was not your answer, you said "undoubtedly". The record will show.

The WITNESS: Let it stand.

*By Mr. Boucher:*

Q. Have you any brand of lines which are not price maintained?—A. We have lines that have been on the market for many years and which carry our name. For example, we have Eureka galvanized ware, Regent enamel ware, Jewell aluminum ware, and so on.

Q. How often are those used as loss-leaders?—A. To the best of our knowledge we have never noticed those lines being used as loss-leaders.

Mr. HEES: Mr. Chairman, first of all I would like to ask you a brief question. Can you explain to me, and I ask this in all sincerity, what is the purpose of counsel for this committee? Is it to be an impartial questioner to bring out points for members of the committee or is his purpose to sell the government's case?

The CHAIRMAN: Mr. Hees, counsel was hired, as in other committees, to give a general line of questioning and to save time by asking questions which will be in the minds of most members. Counsel has an opportunity of doing much more study of the briefs and of the subject than the members of the Committee who have their duties as Members of Parliament. Not all of us have had time to study the reports of the Dominion Bureau of Statistics on variation of efficiency of retail outlets.

Mr. HEES: That was my impression that that is what he was supposed to do, but I do not think anybody doubts he has been here selling the government's case.

The CHAIRMAN: That is your opinion, Mr. Hees.

Mr. HEES: I always want to be fair.

The CHAIRMAN: You are entitled to your opinion and also other members of the committee have an opinion of your tactics and are too polite to express it.

Mr. HEES: That is what we are here for and it is all very pleasant.

*By Mr. Hees:*

Q. Now, Mr. Taylor, I have been on this committee every time it has met and to bring you up to date on it, to me it has been obvious from the start that the proceedings here have been simply eye-wash and the government decided long before the committee was set up that they would put through their legislation no matter what evidence was heard at these hearings.

The CHAIRMAN: That again is your opinion. You are supposed to be questioning the witness on his brief, not on a speech you are going to make in the House.

Mr. HEES: It is to enable Mr. Taylor to get a little background to answer the question I wish to ask.

The CHAIRMAN: I know Mr. Taylor has been following our proceedings very carefully; the comments he has made on other briefs shows that; so perhaps it is not as necessary as you think to refresh his mind.

Hon. Mr. BEAUBIEN: (Joint Chairman): Are you asking Mr. Taylor if he agrees with you?

Mr. HEES: No, I am giving him the background. Now, realizing this is the case—

The CHAIRMAN: Who realizes it is the case?

Mr. HEES: I do.

The CHAIRMAN: So long as it is clear that it is you, not the rest of us, who realizes it.

*By Mr. Hees:*

Q. Realizing this is the case and this legislation will be put through by the government's large majority next week, can your association suggest in the next few days practical legislation against loss-leaders to protect the smaller retailers?

The CHAIRMAN: I might point out you do not have to answer Mr. Hees' premise.

Mr. HEES: Quite. I was asking him if he could or could not.

The WITNESS: Mr. Hees, that question has worried us a great deal. I am very much afraid that we cannot suggest legislation within a short period of time. We think that the need for such legislation is greater today.

*By Mr. Hees:*

Q. This is loss-leaders.—A. Loss-leader legislation is needed more today than it was six months ago or a year ago. As far as we can see, the only practical defence for the small retailer is resale price maintenance.

*By Mr. MacInnis:*

Q. Mr. Taylor, you referred to present conditions as being chaotic; am I correct in that observation?—A. Present conditions in the electrical appliance industry are chaotic.

Q. You are limiting the term chaotic to the situation in the electrical appliance field?—A. Yes, sir.

Q. I wanted to make that clear because I think the impression was given, in fact the statement was made before this committee, that retail conditions were chaotic some months back but resale price maintenance has overcome that and we now have an orderly market. There is resale price maintenance in the electrical equipment business, is there not?—A. Yes, sir, but unfortunately there are some other conditions in that business too which destroyed all the benefits of resale price maintenance and a great many other benefits besides.

Q. My opinion for what it is worth is this, that those who were advocating resale price maintenance were attributing to that method virtues which it did not have?—A. Well, sir, a virtue may be a virtue, but it may not be able to prevail against an overwhelming evil.

Q. I am merely making the observation that we were told here that resale price maintenance had overcome chaotic conditions that had prevailed under the old system.—A. It no doubt overcame certain chaotic conditions, but it has not been sufficient to overcome conditions caused by excessive excise taxes and credit restrictions.

Q. If we go into a period that is sometimes referred to as "overproduction" or a buyer's market, resale price maintenance would have a strain put on it that it couldn't resist?—A. Sir, I think that would depend on how great the strain was.

Q. Well, for instance, the 1930 strain?—A. You may succeed in getting business into such a condition that the sole concern of anyone will be to turn goods into cash.

Q. I am not trying to get business into that condition, I am trying to prevent it without a great deal of assistance. Mr. Boucher asked a question I intended to ask, and I think I will ask it again and perhaps get a clearer answer. He asked if you had branded goods that were not price maintained, and I think he also asked if these were used as loss-leaders and your answer was as far as you know they weren't?—A. That is right, sir.

Q. Why wouldn't these branded goods be used as loss-leaders while other branded goods would be?—A. I think the answer to that is, the potential sale of any of those goods is too small to make them worth while as loss-leaders. We have, for example, in one of our lines a double boiler and there is no sense in the retailer making a loss-leader out of that because he couldn't attract enough customers.

Q. Isn't there a considerable sale for double boilers?—A. It depends on what you mean.

Q. I thought every family that does any cooking would have a double boiler: you would have to have one to make your porridge.—A. A point you may not be familiar with is that we alone offer at least twenty double boilers of various sizes, quality, material and so on.

Q. I think in reply to a question by Mr. Garson you said that the retailer was interested in a profit; is that correct?—A. That is only a surmise.

Q. The reason I ask the question is that you said right after that the manufacturer was interested in sales. Am I to understand the manufacturer is not interested in profits?—A. Oh, no, sir, I would not say that.

Q. Then you said in answer to some question that if a large number of retailers were forced out of business by lower prices and more efficient retail organizations, prices would tend to rise after that?—A. Pardon me, sir, I did not say they would be forced out of business by more efficient retailers. What I intended to say was they would be forced out of business by bigger retailers of greater financial strength.

Q. Isn't that the general economic tendency that the powerful are always displacing the weaker; isn't that the inevitable consequence of the competitive system?—A. I think you are quite correct, that was originally the way the competitive system worked; but I think there has been a large growth of the belief that to a great extent at least the weaker members of the community should be protected from the harsher effects of the competitive system.

Q. I think everyone is trying to protect themselves from the competitive system, no sensible person would want competition; but unless you have some other means of protecting society, competition is necessary?—A. Yes, sir, and our point is: When you have twenty manufacturers or even a less number competing for the public's business, the consumers' business, you have competition.



Q. But wouldn't there be a tendency for that competition to diminish if these manufacturers also want to overcome the discomfort of competition? Will they not be either openly or underhandedly associating to lessen the competition?—A. Well, sir, it is very hard for me to express an opinion at what point someone might succumb to the temptation to commit a crime, but I would like to suggest to you, sir, that there would be less likelihood of such a situation arising if there are many retailers than if there are a few.

Q. And you would include in that many manufacturers?—A. Yes, I would.

Q. You say that 37 per cent of your manufactured goods were price maintained?—A. That is about right, sir.

Q. Is it the tendency for the price of price maintained goods to increase or remain stationary?—A. I did answer a previous question by saying that there has been no shift from one category to another in our business in the past twenty years. From observations myself I have not noticed any shift.

Q. Have you had all these lines of goods that are now price maintained manufactured by you for the past twenty years? Are all the lines included in these 37 per cent lines you have been manufacturing for the past twenty years?—A. Not all of them, we are manufacturing lines we did not manufacture twenty years ago.

*By Hon. Mr. Golding:*

Q. In the first place what has been the experience of manufacturers in trying to merchandise any article where in one particular town two or three merchants are handling that article and one sells it for one price and another for another price and so on? Has your experience in trying to merchandise under those conditions brought about a wide sale of your products?—A. No, sir. We have never felt that it did have that result. We have never felt where we had a situation as we have for example in the city of Toronto, with some retailers selling at one price and other retailers at another, we never thought that was helping our volume of business one bit.

Q. I have been told it was a detriment to the merchandising of a particular product if that happened. I presume the manufacturer is trying to protect himself against that. Now, you have been questioned in regard to the efficient merchant and what happens to him under a system of resale price maintenance. I would like to ask your opinion on the opposite position to that. What happens to the consumer with inefficient merchandising of goods on which prices are not maintained at all?—A. Well, the inefficient retailer, if the price is not maintained, is quite free to try to overcome his losses by increasing his prices, and on price maintained goods he cannot do that.

Q. You wouldn't think the consumer was going to benefit in the case of an inefficient merchant with no price maintenance?—A. No, sir, I do not think he would.

*By Mr. Carroll:*

Q. Do all or most of the manufacturers of your products have price maintenance on those products?—A. As far as I know the manufacturers of the class of product on which we have resale price maintenance have it to a large extent. We, of course, have to depend on observation and we are told as to what our competitors do, but our observations would suggest that they, like us, have list prices or suggested resale prices in the main.

Q. Thirty-seven per cent of your output is under price maintenance as it is understood by the committee. Now, why not place all your products under price maintenance if it is good for yourselves, the retailers and the consumers?—A. The reason for that is that these lines that are not price maintained do not lend themselves to loss-leader selling. They are lines of considerable variety, and I mention, for example, in double boilers alone I think we have at least

twenty varieties in sizes and quality and the like. We do not think it would be practical to build up in the minds of the public an established value for each one of those twenty on which sales would average from a few hundred dollars a year to a few thousand dollars a year.

Q. You mentioned a variety of other manufactured goods you produce outside of boilers altogether. Now, leaving boilers out for a moment, you have a large sale of other commodities on which there is no price maintenance?—A. Generally the same considerations apply to them.

Q. Would you mention again some of the products on which you have no price maintenance?—A. All varieties of household cooking utensils, which cover several thousand items, garbage cans, pails, tubs, stove pipes and stove pipe elbows.

Q. They would not be in the same category as you mentioned a moment ago?—A. They would be in very much the same category.

Q. Isn't there a tremendous sale by you of your household utensils?—A. I don't know what would be tremendous, but we sell several million dollars worth a year. The point I want to make is that it is divided over three thousand or more individual items.

Q. Take these items; is it not because you have so much competition that you do not price maintain those?—A. No, sir, it is not. For example, on one line of household utensils we have, as far as I know, only one Canadian competitor and on others we have three or four, and others ten or twelve. We certainly have more competitors in the manufacturing of gas ranges than we have on many of the non-price maintained lines.

*By Mr. Stuart:*

Q. I was out of the committee for quite some time this morning, but do I understand you correctly to say that you do not have knowledge of resale price maintenance ever being abandoned in any part of the world?—A. That is right.

Q. Isn't it a fact that in several states of the union resale price maintenance is prohibited?—A. No, sir, in fact quite the contrary; in forty-five states of the union they have passed legislation compelling retailers who do not themselves wish to agree to resale price maintenance to do so, because those states felt so strongly that it was a good thing.

Q. And you have not any knowledge of any states in the union prohibiting resale price maintenance?—A. No, sir, I never heard that and I thought the contrary was the case.

Q. Well, this statement I will make may not be correct, but I have seen comparisons of prices of exactly the same articles in states where price maintenance was prohibited and in states where it was the usual practice.—A. The only comparison that could be made between states would be between the forty-five where they had what was called fair trade laws which required retailers to maintain prices whether they would agree to it themselves or not, and the other three states who did not have these compulsory laws.

Q. One other question along that line: Do you know or do you believe that resale price maintenance is enforced as rigidly in the United States as it is in Canada?—A. I would have no way of knowing.

Q. The reason I ask that question is that I have seen articles in the United States where they were allowed to have resale price maintenance and it was not enforced rigidly.—A. I would like to clear up a misconception in your mind there and it may be in the minds of others; it has not been a question in the United States of prohibiting resale price maintenance, the question has been, was it right for a state by legislation to compel a retailer to observe resale price maintenance against his wishes.



Q. And for that reason there are states that do not comply with that?—A. In every state of the United States if the retailer agrees with the manufacturer to maintain prices, then he must keep his agreement.

Q. What is the agreement; would that be verbal or written or what?—A. If it is a question of enforcement I guess it would have to be a provable agreement.

Q. I presume you mean a written agreement?—A. I am sorry I cannot answer that, I do not know if a verbal agreement can ever be proved in court.

Q. There is one other question and I am just asking your opinion. There have been several suggested percentages regarding price maintained articles that are sold in grocery stores. Now, I realize you would not know the percentages perhaps, but I want to ask you this: do you know of a more competitive business today than the grocery business?—A. I wonder if I can ask Mr. Bradley to answer your question. He is the director of merchandising of Peek Frean of Canada Limited and his business is with the grocery trade.

The CHAIRMAN: Yes.

Mr. BRADLEY: Could I have the question again?

Mr. STUART: During our discussions here we have had two or three different suggestions as to the percentage of resale price maintained goods that would be handled in grocery stores. I do not know what the percentage is, but it is a small percentage?

Mr. BRADLEY: That is right.

Mr. STUART: In your opinion would there be a more competitive business today in the grocery business?

Mr. BRADLEY: There certainly would not.

Mr. STUART: Would you suggest there had been any more failures in the grocery business in the last five years than there have been in other lines of business?

Mr. BRADLEY: There have been less failures in the grocery business since the war years when the Wartime Prices and Trade Board imposed a considerable degree of price maintenance. There have been less grocery stores fail because of the very training which they received through the Wartime Prices and Trade Board. Retailers have been taught to figure margins and how to stay in business. Resale price maintenance has saved several manufacturers who are in business and who previous to that time had to introduce and maintain a resale price to save their own business.

Mr. STUART: After the war pressure was put on the government to do away with price controls and it did not come from the consumer, so why was it they were clamouring to do away with price controls immediately after the war?

Mr. BRADLEY: For this reason: in addition to price controls they also were controlled as to how much of each commodity they could buy and their purchases were governed by what they had been in the habit of buying from their source of supply previous to the war.

Mr. STUART: After these restrictions were lifted they could buy in quantities, so who would be in a better position to purchase enormous quantities, the little or big merchant?

Mr. BRADLEY: The big merchant.

Mr. STUART: Again wouldn't that put more pressure on the little fellow?

Mr. BRADLEY: That is true, that is why manufacturers who are dependent on a large number of retailers for their output have been compelled to introduce price maintenance. I went through it myself and I am speaking from personal experience in introducing this line to the Canadian markets. Our line under price control has brought to Canada an investment by a British company of approximately \$2 million; we are giving employment to 140 Canadians at top



wages, and we are giving the consumer British quality biscuits made in Canada at six cents a package cheaper than they would be if the factory had not been brought to this country under price maintenance.

Mr. STUART: I think you will agree with me that you haven't any competition in Canada?

Mr. BRADLEY: We have over forty biscuit manufacturers in Canada.

*By Mr. Stuart:*

Q. There is one question here in connection with loss-leaders and again I am asking you for an opinion. Would you express an opinion regarding the one cent sales that are carried on by the Rexall stores and others?—A. I think, sir, I should defer entirely to the answers you got from witnesses who are acquainted with the drug business.

Q. Yes, but I was asking your opinion. Loss-leaders are apparently your big worry should this legislation be put into effect. Of course, if you would rather not reply it is perfectly all right, but I would like to have your opinion as to the one cent sales?—A. I do not believe I can add anything to what has already been told you.

*By Hon. Mr. Horner:*

Q. You have been questioned on loss-leaders, and I can give you an example you will have in the future—the nation to nation loss-leader in western wheat which is being sold at \$1 a bushel at the present date. Now, committee counsel was questioning witnesses and pointing out statistics of the 11 per cent and 19 per cent variation, and they might have both been equally efficient but one might have had a large consumer market. It seems we cannot all live in the confines of Toronto and shop at Eaton's store, and I think that anywhere where governments are engaged, provincially or federally or otherwise, they adopt the argument for a set price that consumers would share alike. I am particularly interested in that and I have letters from little villages throughout western Canada telling me that is their only hope of surviving.—A. As I said before, it is not a question of the efficient retailer against the inefficient retailer at all. It is a question of the large, powerful retailer against the smaller shop. He may be just as efficient, and in many cases the small man may have a lower expense ratio, or he may be just starting in business and operating in a very small way and cannot stand a price war.

Q. But in rendering a service to a group of consumers he is very necessary?—A. I think he is.

Q. And the same applies to the government in regard to getting prices which are equal in all parts of the country, even away up north where they have to fly goods in. These letters I have indicate that rather than lose price maintenance we should have more of it. It is the only protection for the consumer in small outside points. Any person who wishes to prove a combine can use the prerogative of the government to use the combines legislation, but I claim this is a benefit to the community in outlying and sparsely settled districts.

*By Hon. Mr. Burchill:*

Q. I was a bit interested in the question Mr. Stuart asked regarding legislation in the United States. I was under the impression that some of the states in the union had this legislation in force. I take it from your reply that is not the case?—A. That is right.

Q. And Canada would be pioneering?—A. That is right.

Q. Your reply, if I understood you correctly, was there was legislation in some of the states which protected the retailer from being compelled to sign

an agreement with a manufacturer?—A. No, sir. The situation in Canada is that no retailer anywhere in Canada is required to maintain a price unless he himself voluntarily agrees with the manufacturer to do so. It is not a matter of law, it is a matter of contract between the manufacturer and the retailer. The manufacturer establishes various terms of sale, his price, when he will be paid, what he will do about service, and so on, and amongst these terms there may be a stipulation that the retailer is to resell at a certain price. The retailer looks at that contract and says he likes it and will sign it, or says he doesn't like it. Now, that form of resale price maintenance is legal throughout the whole of the United States. In forty-five states the legislatures passed a law to the effect that if the manufacturer could get one retailer in a state to agree to resale at a certain price, then all other retailers in the state, whether they agreed or not, would have to sell at that price, and a recent decision of the Supreme Court said, "We do not think that is right, we do not think a man should be compelled to maintain a resale price unless he himself agrees to do so."

*By Hon. Mr. Beaubien (Joint Chairman):*

Q. You just mentioned that in Canada the manufacturer has a contract with the retailer?—A. In the main there is no contract in existence.

Q. You mentioned a contract; that is why I am asking you the question.—A. How it works is this, list prices are shown and there is simply a general understanding in the trade that the retailer will sell at those list prices. If he does not do so, at that point the manufacturer may go to the retailer and say, "In future will you agree or won't you?"

Q. If you went to him and said that and he violates the verbal contract and continues to do certain things which are against the verbal contract, then what do you do?—A. Well, sir, the next thing we would do would be to reason with him again and endeavour to explain to him that he was acting in a way unprofitable to himself. I do not think we have ever had a case when the conversation ended up with "We won't sell you any more."

Q. It could happen?—A. It could, yes.

*By Hon. Mr. Garson:*

Q. You said there were forty-five states in the United States in which these fair trade laws prevailed. The other ones, I suggest, are Texas, Missouri, Vermont and the District of Columbia?—A. I do not know which they are.

Q. I suppose you do not hold yourself up as any authority upon this law in the United States?—A. No, sir.

Q. I put it to you that in these other states, regardless of whether or not they can maintain resale price maintenance, they do not in fact maintain it; is that right?—A. I have no idea, sir.

*By Mr. Phelan:*

Q. I wonder if I might make a short statement about this United States law and ask Mr. Taylor if he agrees with it. In the United States they have somewhat the same constitution which we have here, that is, two jurisdictions, the federal and state jurisdiction. Are you aware of that fact?—A. Yes.

Q. May I suggest this to you, that the whole problem started with the passing of the Sherman Act somewhere about 1890, and the Sherman Act provided that all agreements which had the effect or tended to have the effect of restraining trade or commerce were illegal. Do you follow me?—A. I think that was the general effect.

Q. That in so many words made this vertical arrangement between the manufacturer and the dealer also illegal. Do you agree with that?—A. No, sir.

Q. Illegal under federal law?—A. No, sir.

Q. That was before 1900, and in the early 1900's the Propriety Drug Association in California got the first law passed legalizing vertical agreements between manufacturers and distributors. Do you follow that?—A. Well, sir, your description would not fit in with the so-called fair trade law.

Q. I have not come to that yet. That is where price maintenance started, in California?—A. I don't know.

Q. Following that several other states adopted that and to meet that situation the Millard-Tydings amendment to the Sherman Act was introduced into the federal courts?—A. Yes, sir, I think the purpose of that was to make it clear that the Sherman Act was not intended to apply to resale price maintenance.

Q. That is correct, the Millard-Tydings amendment made exceptions to the Sherman Act. Following that the fair trade laws extended from one state to the other until they covered all states except three, and the District of Columbia?—A. So I understand.

Q. Now then, in the District of Columbia and these three states the practice of price maintenance was never recognized by law but it was tolerated in those states; am I correct in that?—A. I don't know, sir. I do not think that is the correct description; the law that existed in the forty-five states was a very different sort of resale price maintenance from anything suggested for Canada.

Q. I think I have in mind what you are trying to tell me. It progressed from the point where the first agreement between the manufacturer and the distributor was made to a point where if the manufacturer made an agreement with one dealer or distributor in the state, that was binding on all other dealers or distributors, whether they were parties to the agreement or not?—A. I know that was the way it was in the end.

Q. Now, are you familiar with the recent decision of the Supreme Court of the United States in the case of *Schwegman vs. Calvert's Distillery*, 1950, S.C.R.? Do you agree with me in the *Schwegman* case the decision is that in the fair trade states, where they have a law such as we have been describing, no person is bound to observe the manufacturer's fixed price except a dealer or distributor who has entered into a definite agreement with a manufacturer?—A. That is right.

Q. So that has left a situation now whereby any person in these fair trade states who can get possession of price maintained products to sell, can sell at any price he wants to?—A. Yes, sir, and the manufacturer can go to the retailer and say that one of the conditions if he is going to buy his goods is that he will sell them at a resale maintained price.

Q. So far as the law is concerned, resale price maintenance has no government sanction or approval to apply to any person except the man with whom the manufacturer has an express agreement?—A. I do not think so. The Millard Tidings amendment which is an enactment of the federal government gives legal sanction to resale price maintenance.

Q. Only between the manufacturer and the dealer with whom he has a definite agreement?—A. Certainly.

Q. It does not protect the manufacturer against the dealer who can get his commodities and sell them on a free market?—A. It does not.

Q. That is what Macy's did with many products in New York last year. —A. It is now quite free to the retailer who has not agreed to maintain prices to sell at any price he likes.

Q. I suggest to you that with the *Schwegman* case resale price maintenance has received a very vital blow. Would you agree with that statement?—A. No, sir, I would not agree with that at all.



The CHAIRMAN: You are aware one of the provinces of Canada has a law very similar to the law in the so-called fair trade states?

The WITNESS: No, sir.

The CHAIRMAN: It is my home province of British Columbia.

Thank you, gentlemen, for a very full morning.

The Committee adjourned to meet at 3.30 o'clock p.m.

#### AFTERNOON SESSION

Committee resumed at 3.30 p.m.

The CHAIRMAN: Will the meeting come to order. Before we proceed I would again remind members that we have a file of correspondence of all the wires and letters received. They have all been acknowledged from the office of the clerk of the Committee. The second matter is: Members will recall that the last report of the steering committee suggested that the next meeting of the steering committee would be held on Tuesday or Wednesday to consider such amendments or resolutions as members put forward with a view to getting them in shape to pass on to the main committee on Thursday or Friday. So far we have received only two, and one is the suggested amendment of Mr. Croll on loss-leaders, and the other in the briefs, which have been received and circulated of the Co-operative Unions. They have made specific suggestions as far as legislation is concerned. Have any other members any suggestions they would like the steering committee to consider, remembering that the steering committee will meet tomorrow at three o'clock before the meeting of the main committee, and this will be the principal order of business before the steering committee?

Now we are going to resume with the testimony of Mr. McGregor. Mr. McGregor himself has one or two points he would like to clarify as far as his evidence is concerned.

The point was raised by Mr. Thatcher this morning as to whether the members were to proceed with the questioning of the witness, or whether the questioning was to be by committee counsel; and a request was made to me by Mr. Beaudry through Mr. Burgess, our committee clerk, for one hour's questioning. That was a written request, was it not, Mr. Beaudry?

Mr. BEAUDRY: In private conversation with the clerk I told him I thought I would want at least one hour.

The CHAIRMAN: So far as the questioning of Mr. McGregor is concerned, Mr. Beaudry has already had 25 minutes, although we had agreed to a limit of 10 minutes.

Mr. BEAUDRY: May I speak to that on a point of order? I would refer you to page 402 of our Minutes of Proceedings. During that period Mr. Thatcher asked for an opportunity to study the brief. Following that Mr. Thatcher put forward a motion, and the motion was defeated. It is my suggestion that the committee should acknowledge that I should be given the time, and I still think it is in keeping with your own decision.

The CHAIRMAN: That point was whether we should adjourn immediately and I said "no, let us start the questioning immediately" and you had 25 minutes questioning at that time.

Mr. BEAUDRY: May I quote further from the record?

The CHAIRMAN: Surely.

Mr. BEAUDRY: "Mr. Hees declines." Evidently the chairman having then seen Mr. Hees first, to which Mr. Hees replied "I think Mr. McGregor has answered all my questions" and the chairman said "Mr. Hees declines", and

then follows what I take to be a list of speakers in order and then your observation as to the way you thought it would be well done. Mr. Croll states "As far as I am concerned Mr. McGregor 'has spoken', and I have enjoyed every moment of it" and you, Mr. Chairman, understood from that that Mr. Croll did not intend to question and passed on to Mr. MacInnis, who stated "I did not ask for any time". You passed on then to Mr. Shaw, who said "I am pleased that you observed a nod, but you misinterpreted this time. I did not have a question", and then that leaves Mr. Beaudry, Mr. Fulton and Mr. Thatcher. Mr. Hees stood down, which left again Mr. Beaudry, Mr. Fulton and Mr. Thatcher. There was a lot of conversation between Mr. Croll, Mr. MacInnis and others, following which you stated: "I would suggest that perhaps both groups would be pleased if we gave Mr. Beaudry whatever time he wants and during that period Mr. Thatcher can study the brief", and at that point Mr. Thatcher moved that Mr. McGregor be called back tomorrow and that motion was defeated. I stated on page 402, following your statement that Mr. Hees stood down: "If the ten minute rule applies I would rather someone else question." By that I thought I made myself clear, but eventually I did question for what you say was 25 minutes. We had recess because of a vote, and when I came back you told me that Mr. Fulton was just filling in until I returned. At page 411 you stated "Three people around me have reminded me about the 10 minute rule" which, I believe, we had slightly overlooked in view of my statement on page 402. At page 411 I said: If that is the case, following your other remark, I will gladly interrupt my questioning at this stage, but not stop it, and I pointed out why I would rather interrupt and not stop. I said: "I will state so, Mr. Chairman, I would submit that I am under some handicap, as all the other members are, by having this brief read without having a chance to study it. I would like to question on the brief and I will leave it entirely in your hands whether somebody else proceeds now." And then Mr. Croll said "I can exhaust my questions in three minutes" and I said: "I will defer, then", presumably for three minutes, and I contend today it is my right as a member of the committee to start questioning this witness again.

Mr. MACINNIS: Mr. Chairman, I am sorry I was not in at the moment when this started. Do I understand that the position Mr. Beaudry takes is that he has unlimited time for questioning?

The CHAIRMAN: That is the way I understand it.

Mr. MACINNIS: Regardless of what was said the other day, I think it was said for that day, and this is a new day; certainly we cannot allow one person to have all the time he wants, which may mean that other members may not get any time at all.

Mr. BEAUDRY: You stated very clearly Mr. MacInnis you had no questions to ask.

Mr. MACINNIS: That was for the day Mr. McGregor appeared. I may be like you and have changed my mind. But this is a new day. We have to run this committee with some degree of impartiality as to the time that members of the committee will have for questioning, and that is what we ought to do now. I for one would suggest that Mr. Beaudry has the same rights as other members of this committee.

Mr. BEAUDRY: I suggest that I have at least the same rights as the witness. I am a member of the House of Commons, a member of this committee. The witness spoke for quite some time and, in terms of some newspapers, made a fighting speech for 1½ hours. I consider I have the right to question for an hour at least.

Mr. SHAW: On a point of order, Mr. Chairman. I want to make it perfectly clear that when I said I had no questions last day it was for that day, for that time, that I had no questions. I certainly did not commit myself for



the remainder of our deliberations. Secondly, I would like to make it very clear that as far as I am concerned the rules are going to apply to all. I have never exhausted my questioning in ten minutes and I could go on for an hour, too.

Mr. BEAUDRY: Mr. Chairman, on the same point of order, I am pleased that Mr. Shaw states that the rules will apply for everybody, because then I will quote from page 6 of our record, which states, reading from the report of the subcommittee on agenda and procedure, which recommended, among others: "(3) That the committee insist that all briefs be filed in advance of the appearance of the witnesses and that copies be distributed to members of the committee" and "(4) That the brief be not read in committee but that examination be confined to a short statement by the witness, and questioning." I think we have overlooked both: firstly, that it be not read and, secondly, that it be confined to a short statement, and yet the submission made by this witness took  $1\frac{1}{2}$  hours.

The CHAIRMAN: If I may, as chairman, have a word in here. Mr. McGregor was the first witness that the committee called, and it was on Mr. Hees' suggestion—an excellent suggestion—confirmed by the steering committee and confirmed by the main committee. We asked Mr. McGregor to appear, which puts his appearance in a little different category than the appearances of the other witnesses.

Mr. BEAUDRY: Still on the point of order, Mr. Chairman—

The CHAIRMAN: Just a moment, Mr. Beaudry. You will be taking the full hour before we even get started. This is the first time that I have been a chairman of a committee, but I have been a member of many committees during the past ten years, and it is the first committee in my experience whose members have very strong views on the subject under discussion and in which every member wanted to ask questions. In most committees, the questioning is confined to three or four members, but here almost every member has been keen and eager to ask questions. In view of that, the committee, with a single exception, has certainly co-operated, and the 10 minute first round rule and the 10 minute second round rule has been a fair one. I have had the co-operation of the members of the committee and I want to express my appreciation. On the point that Mr. Shaw raises, that members should be confined to a 10 minute period: we have been able to provide an opportunity for every member to ask some of the questions in his mind. I am quite sure that Mr. Beaudry thinks his questioning is tremendously important, but I would like to tell him that other members of the committee think their points are also important. I will accept a motion that the 10 minute rule be waived or adhered to this afternoon.

Mr. BEAUDRY: Still on a point of order, Mr. Chairman, I do not think my questions are tremendously important, but my responsibility is strictly my own and no one else's on this committee. If we are dealing with what I would call slightly garbled procedure, then I would refer you to pages 3, 4 and 6 of our record. Who is the member of the committee who requested the attendance of Mr. McGregor? Who signed the certificate required?

The CHAIRMAN: The clerk tells me that there is no regulation of that sort unless expenses of the witness are to be paid.

Mr. BEAUDRY: I would like to read you standing order No. 67:

"No witness shall be summoned to attend before any committee of the House unless a certificate shall first have been filed with the chairman of such committee, by some member thereof, stating that the evidence to be obtained from such witness is, in his opinion, material and important."



This is from the 1943 edition of Beauchesne. I only came here in 1945 and it has not been revised since.

The CHAIRMAN: Mr. McGregor was called at the request of the committee.

Mr. BEAUDRY: I do not think you can set aside an order of the House of Commons in that way.

Mr. MACINNIS: I move that the 10 minute rule be adhered to.

The CHAIRMAN: All those in favour? Opposed?

Carried.

Mr. McGregor, will you proceed.

**F. A. McGregor, C.B.E., recalled:**

Mr. BEAUDRY: Mr. Chairman, on a point of order. I am still quoting standing order 67 of the rules of the House of Commons. I do not need to repeat it, but no one shall be summoned to appear as a witness unless there has been a certificate filed to the effect that the evidence of such witness is material and important. If we have no such certificate filed with the committee I do not think we should have heard the witness in the first instance, but if we have, and have disregarded the procedure to that extent, I think we can disregard the clock.

Mr. MACINNIS: I think Mr. Beaudry is out of order as far as making that point of order is concerned now; he should have protested Mr. McGregor's appearance in the first instance, at the time of the event and not at some other future time. If it is out of order to have Mr. McGregor here, it is rather strange Mr. Beaudry is anxious to have him questioned, and I would remark that it was not out of order until the time he requested for questioning was refused.

Hon. Mr. Fogo: Mr. Chairman, the rule quoted by Mr. Beaudry has no application to a witness before a special committee.

The CHAIRMAN: My understanding of the rule is that where it is necessary to use a subpoena to compel the witness to attend, and only in such cases it is necessary to pay the witness's expenses. You will remember that point was raised in the steering committee. One member thought that it might be of some embarrassment to Mr. McGregor to appear and it was decided against sending him a subpoena. It was decided we would not have him here under a subpoena. Most members of the committee, and those who followed the proceedings think that Mr. McGregor's evidence was as valuable to this committee as any of the other witnesses we have had before us. Those witnesses, too, have not been summoned in the way Mr. Beaudry mentions, again for the reason that they are coming here at their own expense. We divided the witnesses very early in the category of those who would appear voluntarily and those who would have to be subpoenaed.

Mr. BEAUDRY: Has the chairman any authority to interpret standing order No. 67?

The CHAIRMAN: Only the fact that I have been attending committees for 12 years and attending them very regularly.

Mr. MACGREGOR: I think we will proceed.

The WITNESS: I would appreciate it if the members of the committee would permit me to amplify my answer to a question which Mr. Thatcher put to me on Wednesday last. He asked what kind of dealers would be eliminated if their number were reduced by the elimination of resale price maintenance. My answer was: the ones that are not providing the service, in price and everything else, that the community needs. It is hardly a sufficient answer and I would like to add something to it.

The decision as to which dealers will stay and which will go should be made, and is being made, from day to day, by the popular vote of the consumers of the country. In every community in Canada, tomorrow, consumers will have the opportunity of casting their votes for or against the long list of candidates who offer their services. They may decide to retain nearly all of them, by distributing patronage across the board, a large vote to some and a small vote to others. Some dealers, though, may poll such an exceedingly small vote, in other words may get so very little of the consumers' business, that it would seem to be the part of wisdom to withdraw from the field, at least as proprietors of stores, which in the end consumers have to maintain and pay for indirectly. Our sympathies are usually with unsuccessful candidates, whether in politics or business. But all of them cannot be successful. I think war veterans now in business in a small way (Mr. Thatcher referred to them particularly) would be among the first to insist that they should not be kept on in jobs where their services are not needed or wanted, and cannot be adequately paid for. They want to stand on their own feet and make their way in business on their own merits.

Mr. BEAUDRY: On a point of order, Mr. Chairman, is this an answer to a question or does it qualify an answer previously given?

The CHAIRMAN: This is the same sort of clarification we permitted other witnesses when they returned a second time, both Mr. Harris and Mr. Preston. We are prepared to extend the same courtesies to Mr. MacGregor. Mr. Thatcher is grateful for this clarification.

Mr. THATCHER: I would be glad to hear it.

The WITNESS: "Free entry" into any field of business is a cardinal principle in our kind of economy. But "free exit" is a necessary part of the system too. Resale price maintenance encourages entry by guaranteeing margins, but apparently its proponents would like to have those margins high enough to enable those whose services are least required to continue in office, or rather in business, even though the community, through its lack of patronage, has clearly indicated that it would be as well off without them.

To deal more specifically with Mr. Thatcher's very specific question, who will go, I might use the drug trade by way of illustration. I use it because there is no branch of business in Canada which is relying more heavily on resale price maintenance, none more vocal in support of the practice. These dealers have established conditions which encourage free entry on the part of graduates of the pharmacy schools. But they are vigorously opposed, and their opposition is a natural one, to the free entry of others into their field. Witness the strong pressure they have brought to bear on their principals, the manufacturers, to induce them not to sell to grocery stores any of the lines which they refer to as drugstore products. This, even though they have created conditions which invite the encroachment of lower-cost operators into their protected field.

Who will go? I should think that a few druggists might decide to go if present guaranteed margins were eliminated and they had to meet competition, as most other dealers do, in an unprotected market. The number would be much fewer than one would judge from the representations that have been made. Many of them, I should think, would be spurred to an efficiency they have not had to exercise, and would find ways and means of increasing their volume of sales and therefore their usefulness to the community. If some druggists disappear because of changed conditions, I should think they would be the ones whose sales are lowest, the ones that consumers have decided, by their votes if you will, are not providing services that consumers need. In 1941 the Dominion Census (Volume X, p. 456) reported that 236 independent druggists were selling less than \$5,000 worth of goods a year. (Incidentally,



the record shows that 21 per cent were selling less than \$10,000 and 50 per cent less than \$20,000 a year). But take the group whose sales were less than \$5,000 a year. If they got a net profit of 10 per cent on sales their yearly income would be only \$500. If by taking thought they could add another 10 per cent to their net profit, even 20 per cent would yield only \$1,000 a year. Hardly a sufficient return to justify their continuance, hardly an indication that their services are required by the community, particularly a community which is already well served by their competitors.

Probably some of the 236 are still in business—1941 may have been their first year and sales of \$5,000 or less may have increased now to \$50,000—more power to them! I imagine that in 1951 there would be much fewer than 236 in the category of \$5,000 or less. If some of their stores disappear in 1952, I don't think the proposed legislation should be held responsible for their disappearance.

Mr. BEAUDRY: Do you still think that is in order as a clarification of the answer?

The CHAIRMAN: Go ahead, Mr. McGregor.

Mr. BEAUDRY: Call me when the second brief is read, will you?

The WITNESS: With volume of business exceedingly low, operating costs per unit of sales must be exceedingly high. No conceivable increase in the rate of net profit would enable such stores to be operated successfully as separate establishments. They would be unprofitable to the dealer, and also a financial burden on the public if you agree with me that, eventually, consumers have to pay the shot even for services that they don't want.

But it is not all a dark picture for those now engaged in the business. If I may use the simile of the ballot box once more, I would say that some other candidates may withdraw from the field. In spite of the efforts of the druggists to prevent grocery stores handling their lines, they have not been too successful. The brief of the Consumers Association describes the success that did attend their efforts in keeping such items as Pablum off the grocery shelves. I happen to have inside information about their efforts to keep other items in their hands exclusively and the pressure that was applied to several manufacturers, because we in the Combines Commission took our part in preventing the preventions. Today you have only to look at the shelves of many grocery stores to see a growing series of products which were at one time sold exclusively in drugstores. The attractive margins, guaranteed margins, were responsible for the grocery trade reaching out to include such goods in their stock-in-trade. That does not mean an increase in the number of drugstores because of resale price maintenance. It does mean an increase in outlets for drugstore products. We have no figures in Canada that would indicate how greatly these outlets have increased in number. But figures quoted in the Canadian Pharmaceutical Journal of September 15, 1951, indicate the enormous increase in such outlets in the United States, where the so-called "Fair Trade" laws have been operating to prevent price reductions at wholesale and retail levels. The statement in the Pharmaceutical Journal is a quotation from an American trade paper, "Drug Topics," issue of May 21, 1951. It says:

Between 1946 and 1950, the number of food stores carrying more than 20 drug store products increased from approximately 25,000 to more than 100,000.

Another article published in the Canadian Pharmaceutical Journal, on January 15, 1951 (this one a reprint from "Business Week") confirms the trend:



While the retailers' sales volume has held even, wholesale drug firms have chalked up gains. During the first nine months of 1950, sales at wholesale increased 7 per cent as against no gain at the drugstore level.

Wholesalers have a ready explanation for this seeming paradox. Their increase in sales is a result of the growing business they are now doing with other sources. . .

An increase in wholesale sales would not tell the whole story because chain stores don't buy much from the wholesalers; they buy direct from the manufacturers.

In the United Kingdom the druggists and others have had the same experience of encroachments on their hitherto exclusive territory, and they have made similar efforts to recover lost ground. I refer you to pages 9 and 10 of the excellent brief presented to you by the Canadian Association of Consumers. I hope that brief will be included in the printed documents that will be available to the public as well as to the Committee.

To get back to my point, and to Mr. Thatcher's question, Who will go? I may be wrong, but in my opinion many of these outlets will "go" if the practice of resale price maintenance is prohibited. Grocery stores have reached out for these price-maintained goods because the margin on them is guaranteed and on most of them is enormously higher than anything they get on their own competitive lines. When you eliminate the guarantee provided by resale price maintenance, these goods will lose much of their attractiveness as unusually profitable lines. Of course they won't give them up if, on their own, individually, druggists persist, as some of your witnesses have said they would, in demanding the full list price that the manufacturers have suggested or insisted upon. In the face of grocery store competition, based on much lower margins, I doubt if they will be able to get such prices.

Much has been said in these hearings about the prospect of bankruptcies on a large scale. I don't propose to discuss that now, but I would suggest that some light is thrown on this aspect by the actual number of bankruptcies as reported from year to year in the Canada Year Book. In the five year period 1945-1949 only 142 commercial failures were reported in retail food stores, out of a total, to take the 1941 Census figure, of 48,468. This means an average of less than 30 a year, which is about one-sixteenth of one per cent of all retail grocery stores in Canada. And this is a field of trade in which price-maintained goods represented only a small percentage of the total. I would like also to refer to the latest in a series of tables which Dun-Bradstreet's have been publishing for years showing what they believe to be the underlying causes and the apparent causes of business failures in the United States. The latest table I have seen was published on page 22 of Dun's Review of June 1951. One very striking feature of the analysis is that "incompetence" is recorded as being the underlying cause of 43 per cent of the failures reported for the 12-months period, and "lack of experience" and "unbalanced experience" the underlying cause of another 41 per cent. I see nothing in the table to indicate that so-called "loss-leaders" or, more accurately, "selling below cost" by competitors had anything to do with any of the reported failures.

*By Mr. Fulton:*

Q. Last Wednesday I asked you two questions before Mr. Beaudry came back and to summarize so we may follow from there up, I think you will agree with me that your answers established that, although you say you had been concerned for some time about resale price maintenance you had never instituted an inquiry exclusively towards preventing that practice, or recommended any legislation to deal with price maintenance, although you state that in your view the existing combines legislation is not satisfactory in that

respect.—A. Yes, we were still hoping even in 1948 that the Combines Act as it was might be sufficient to deal with it. I indicated that in my 1948 evidence. We were still hoping the existing remedies might be made to apply. That is a condition I do not think exists now. My own opinion is that as of December, 1951, it is not possible under the existing Act to deal with an individual manufacturer fixing resale prices.

Q. You have seen the draft legislation that was presented to the committee by Mr. MacDonald, the present Combines Commissioner?—A. Yes, I have seen it; I have not made a close study of it.

Q. Would you agree with me that this draft bill simply establishes it is an offence to fix retail prices but does not constitute in any way as an element of that offence the question of whether or not the particular circumstances worked against the public interest?—A. I think the passage of that bill would mean that parliament was declaring it to be an offence in itself.

Q. In your view should the prosecution in the case of an alleged offence of resale price maintenance have to establish that the particular practice or combination of practices was operating against public interest?—A. I think where the evidence is as clear as it is now that the practice unduly lessens competition, it is desirable for parliament to say so definitely instead of having to go a long roundabout way of proving undue ness. I indicated the difficulties under the existing Act of proving that a single manufacturer's action was against the public interest or was unduly lessening competition.

Q. You take the position that parliament should say resale price maintenance as such is against the public interest, and that from there on anyone who in any way maintains prices or requires anyone else to maintain prices is committing an offence?—A. Yes.

Q. You said: "When the evidence is as clear as it is that the practice is against the public interest..."; then do I take it that in arriving at your conclusion that it is against the public interest you divorce from your mind any consideration of whether or not in the long run it operates to reduce prices to the consumer? Do I understand you are simply saying that because it restricts competition it is adverse to the public interest?—A. That is pretty much the basis of my own thinking on it, except that I would add that not every restriction of competition should be regarded as offensive; it must be an undue restriction.

Q. Your opposition to price maintenance as set forth in your brief proceeds entirely from your proposition that it is a restriction of competition, and not at all from the basis that it affects the public adversely from the point of view of the ultimate price to the consumer?—A. Correct, undue restriction of competition is the basis in my opinion.

Q. You have also I think referred to the desire of the manufacturers to have their prices maintained. Now, as between the manufacturer and the retailer, who benefits most, who wants it most?—A. Unquestionably the retailers.

Q. Would you then make any comment on evidence such as we have had from Mr. Swenson, president of the Allied Beauty Equipment Manufacturers' and Jobbers' Association? I think it is at page 98 of the record and it shows very definitely that he, as a manufacturer, was vitally concerned with this question. I refer to his answer on page 98, where Mr. Thatcher was questioning him with respect to his practice in cutting off supplies and he was asked:—

Q. Would not that be a little rough sometimes on the individual dealer, to lose the whole line?—A. I do not think it would be rough at all. Imagine one of my customers, one of my fifty customers starting to get rough with me and I have been working with him on that for thirty years. Do you think that is being rough? He, without any thought, proceeds to cut my business in half, wreck it, and I have worked thirty years for it.



There is a case where a manufacturer says it is against his interest if retail price maintenance was not followed and he feels obviously very deeply about it. What would you say as to his argument?—A. I think this particular group is one again you would classify as one of the “peculiar” industries. It is not selling its goods to the public through retailers to any extent, most of their sales are made to beauty parlours and barber shops.

Q. You do not go so far as to say that a witness in the position of Mr. Swenson has no justification for concern as to the future success of his business, such as he indicates he very definitely does feel if price maintenance is to be eliminated?—A. Yes, just as retailers have certain rights to do what they can to protect themselves from competition, but I do not think they should have the right to go so far as resale price maintenance goes and I do not think the manufacturer should have that right either.

Q. Following up your answer to my last question but one, let me ask: would you be prepared to recognize the desirability of working out different provisions to apply to different types of trade or manufacturers in this respect?—A. I have not given thought to such a possibility. I would think a law of this kind affecting trade should apply right across the board. If you put in any provision that parliament or the government would grant exemptions I would be afraid that considerations would be given weight other than the ones that should be taken into account.

Q. You are prepared to stand or fall by a blanket form of legislation such as this before the committee?—A. Yes.

Q. Now, I want to ask you a question or two with regard to the possibility of enforcing this particular draft bill we have before us. Am I not correct in saying what this amounts to is a prohibition on the manufacturer's attaching any conditions to the resale of his goods?—A. I believe he can suggest resale prices even under this bill.

Q. Under this bill you think he can suggest resale prices?—A. I believe so.

Q. Then what chance of success do you see in enforcing this measure so as really to stop price maintenance?—A. I think the mere existence of the law in the statute books will have a very salutary effect in ensuring compliance. Most business men in Canada observe the law and they will observe this. You must have some machinery for its enforcement and you have that in the Combines Investigation Commission. An investigation of an offence of this kind is just the same as an investigation conducted in any of the alleged combine cases.

Q. Well, let me put to you a hypothetical case of a manufacturer of shoes who has in the past been insisting his retailers sell them at a certain maintained price. Now he finds he still desires to maintain the price at which his goods are sold. How are you going to prevent him from doing so if he finds that the retailer is not selling them at the suggested price and stops supplying him? There are hundreds of reasons which could be given; how are you going to enforce the law in that regard?—A. By an examination of his records, for one thing; to determine what is the real reason. We have had many cases of refusal to sell where it was quite clear that the manufacturers had very good reasons for not continuing to sell. It may have been bad credit, the man may not have been paying his bills. It may have been, as in one case in Montreal, that new goods were sold on the same floor as second-hand goods; the merchant who was refused supply complained to us and we made an investigation and came to the conclusion that the manufacturer was within his rights in refusing to have his goods sold along with second-hand goods, sometimes interchanged.

Q. Then you think it is all right for manufacturers to insist on some conditions to be complied with by those who are reselling their goods?—A. If goods were refused because a dealer sold below the suggested resale price I think action should be taken.

The CHAIRMAN: Thank you, Mr. Fulton. Mr. Thatcher is next.



*By Mr. Thatcher:*

Q. Mr. McGregor, this morning one of the witnesses made a statement which rather surprised me. I wonder if you could either confirm or deny it? He suggested that the legislation which is now proposed, exists nowhere else in the world today?—A. It is proposed, of course, in the United Kingdom.

Q. But it is not in effect?—A. It has been proposed. I think you have me stumped and I cannot give you an instance.

Q. In other words, Canada would be the first country in the world to bring in legislation of this kind?—A. I would not like you to take that as an answer that there is not any.

Q. But as far as you know?—A. That is the answer.

Q. Can you tell the committee, Mr. McGregor, if this legislation goes through, whether in your opinion it would help reduce prices to the consumer?—A. I certainly think it would, and that it will. May I just mention the instances I have already given of many drugstore items that are carried in grocery stores. If grocers are not under any requirement to maintain resale prices I am quite satisfied that they will not continue to take the very large margins they are taking on drug store products that are price maintained now.

Q. Can you give the committee any tangible figures to back that opinion up? I suppose you would have them in files somewhere?—A. You are asking me to prophesy in detail what will happen.

Q. Have you no figures to back up your opinion that the abolition of price maintenance would bring prices down?—A. I have referred to the difficulty of comparing what the situation would be under resale price maintenance and what it would be under a free price system. We cannot compare them in Canada. Comparisons have been made in several states in the United States where "fair trade" laws are in effect, and in other adjacent states where they are not. It is perfectly clear from those comparisons that the prices of goods which are price-maintenance in the one state are very much higher than prices of the same goods, not maintained.

Q. I wonder if you would refer to your brief Mr. McGregor, where you mentioned the match prosecution? On page 390 of the evidence you say: "None of these inquiries, however, clearly involved the fixing of prices by a single manufacturer, except in the case of matches, in which industry the single manufacturer was in the end the only producer of wooden matches."

Do I take it from that statement that the only prosecution the Combines Branch has had along these lines, is the match case?—A. The only one on resale price maintenance alone?

Q. Yes, were you able to win your case in that particular instance?—A. Again it is confusing because resale price maintenance was only one element in the case. Other methods were used to drive out competitors, including selling at exceedingly low prices. There were many factors that entered into that decision.

Q. In any event, the match company was ordered to discontinue resale price maintenance?—A. No, the match company was convicted of an offence under the Combines Investigation Act.

Q. As a result of which they stopped fixing the resale price of matches?—A. That I do not know. That has been since my time. I might refer to the optical case...

Q. Excuse me, Mr. McGregor, I have only ten minutes and I would like to clear up this point. If I understand the case correctly, one of the results of the decision, was that the company decided not to fix the price of matches in the future.

The CHAIRMAN: In fairness to Mr. McGregor, Mr. Thatcher, the prosecution occurred since Mr. McGregor left the branch, and, secondly, if you would, when you are speaking about the judgment, indicate where it is pointed out that they had to discontinue resale price maintenance, that would be helpful?

Mr. THATCHER: I referred to Mr. McGregor's statement that the match case was the only one that had been prosecuted by his department, which involved the fixing of prices by a single manufacturer. I think the trend of match prices since the prosecution is significant. Perhaps I could place on the record a letter written to the Ottawa Citizen, last week in this connection.

The CHAIRMAN: But you are saying that price fixing was abolished. Mr. McGregor answered categorically "no". It is your opinion that price fixing was abolished.

Mr. THATCHER: May I put this on the record?

The CHAIRMAN: As long as it is your opinion.

Mr. THATCHER: This is a part of the letter.

"Editor, Citizen: A purchase of matches made today has led me to wonder about the value of the Combines Investigation Act and prosecutions (even successful) under it.

For some months, while the trial was in progress and judgment reserved, 'National Grocers Company Limited' matches made by 'Eddy Match Company Limited,' sold at 25 cents for a package of three boxes of household matches.

Today I bought these matches and found the price to be 32 cents."

The point I am wondering about is simply this? Is it not possible that if price maintenance comes off, many prices will, instead of going down, go up?—A. I do not think that is what will happen.

Q. But in the only case the department prosecuted, prices did go up sharply.—A. There has been no indication that it was the dealer's margin that was responsible for the increase. Resale price maintenance provides a certain margin for the dealer. I should think in this particular case it would be due to an increase in the manufacturer's selling price.

Q. But the fact remains, Mr. McGregor, that the only case that has been prosecuted along these lines by the department, is the match case. Since the company removed price maintenance the price of matches has gone up very, very substantially. I suggest there is a danger that the same might happen in other lines.

Did you hear Mr. Harris give his evidence, where he suggested that mark-ups on non-price maintained goods were higher than those on price maintained goods? A. Mr. Harris mentioned at one time that generalizations are unsafe, and that you should refer to specific cases. In this case I think using the specific instance is very unsafe, particularly when you do not know all the facts. I am not suggesting that you do not know all of them but the facts are not known. What is responsible for that? There may be a host of other conditions that are responsible. You cannot blame the Combines Act for that particular result.

The CHAIRMAN: Mr. Thatcher, I will give you a minute but it occurs to me that one of the reasons we hired our very successful counsel was that they had some experience in this matter. While Mr. McGregor does not know of the case Mr. Favreau was junior counsel for the Combines prosecution and perhaps he could tell us whether resale price maintenance was abolished.

Mr. THATCHER: As long as you are not taking it out of my time.

The CHAIRMAN: Tell us, Mr. Favreau?

Mr. FAVREAU: There were four counts in that case and only one has been prosecuted to date. The others are still pending and will probably go on in January or February. The count on which we prosecuted was under Section 2 (4) (b) of the Act—that is substantial control of the industry, and the resale price maintenance angle was brought out in the evidence as one of the different modes or methods used to bring about the combine. There was no prosecution as such based on resale price fixing by the manufacturer. There were agreements between the manufacturers and the distributors and those agreements were used as one of the methods to finally assert substantial and full control over the whole field.

Mr. THATCHER: I do not know what the reason was but the fact remains, does it not, that this company is no longer practicing price maintenance and I suggest it is because of the recent prosecution.

Mr. FAVREAU: I am not speaking of my own factual knowledge of the thing but they might not be practicing resale price maintenance contractually, that is by the strict arrangements with dealers as they used to do; but they might be fixing them directly in the exercise of their monopolistic control. That is just one of the things which is foreseen by the legislation Mr. McGregor is speaking about.

The CHAIRMAN: You have two more minutes, Mr. Thatcher.

*By Mr. Thatcher:*

Q. This morning, one of the witnesses said that the abolition of resale price maintenance might force manufacturers to go more and more into the retail field directly. He mentioned some companies which have their own outlets—at present—Singer Sewing Machine, Laura Secord, certain shoe stores, and others. If more manufacturers did adopt such a course do you not think it might tend to put quite a few retailers out of business?—A. Yes, I think it would.

Q. Well, in fairness to the small retailers, how would you regulate prices in stores of that kind?—A. There is no proposal to regulate prices.

Q. In other words such manufacturers would not be affected by the proposed legislation because they are selling right from the manufacturing level to the consumer?—A. Just as the chain stores have an advantage now, since they buy direct from the manufacturer and eliminate one factor—the wholesaler. However, independent retailers can meet that competition and are meeting it. Their operating costs in many instances are lower. In many ways they can meet that competition—and they are doing it.

Q. What about manufacturers that sell from door to door? Would you say the same was true of them? I refer to firms like Rawleighs, Fuller Brush, and companies of that kind? Would there be a danger of more companies selling in this manner to get around the legislation?—A. I cannot answer that.

Q. There would be a possibility, I think you would agree?—A. I do not think there is a likelihood of it.

The CHAIRMAN: One more question, Mr. Thatcher.

*By Mr. Thatcher:*

Q. If resale price maintenance is abolished would you not think that mail order houses would obtain additional sales on former price-maintained?—A. It depends on what consumers want. Consumers may decide that they like to buy their goods by the mail order system and they should not be interfered with.

Q. Would that not mean a greater concentration of retail selling in centres like Winnipeg, Toronto and Montreal where these mail order houses are located, at the expenses of the little dealer in the smaller centres?—A. If that is what the consumer wants.



Mr. FULTON: Do the consumers ever conscientiously want to think of them?

The WITNESS: I think they look at the price in the catalogue and the price on the shelves.

Mr. FULTON: But they do not want the other result?

The WITNESS: No.

The CHAIRMAN: Mr. Hees?

*By Mr. Hees:*

Q. Mr. McGregor, since this came up I have talked to a great many small retailers in my own riding. I have between 500 and 600 and they are almost all small men selling every type and size of goods. I have found that all of them—and I was quite surprised at this as I would have thought only those who sold under price maintenance would be particularly upset about this legislation—but I found that was not the case, and that all of them are worried, for this reason. They are afraid that the chain stores and the big departmental stores will use branded lines as loss leaders day by day, to draw customers from their stores. As you know, a loss leader is offered by a store to get people to come in and buy something at a bargain and they stay to buy other kinds of goods.

These people that are afraid, even though they might not sell those standard lines themselves, that their customers will be drawn off to the big chain stores and departmental stores who will be using branded lines as loss leaders. For that reason I have come to the conclusion, and I wonder whether you have, that if this legislation goes through—and it looks as though it will—is it not desirable that we work out some kind of workable legislation—it has got to be workable or it is no good—to make loss leaders illegal. I think if that could be done a great deal of the objection and the fear which these very sincere small dealers have would be removed. Unless it is done I think their fears are very well founded.

What do you think about the possibility of legislation of that kind, Mr. McGregor?—A. Well, you have given me a pretty big order in asking me to answer such a question, but it is a very important one I agree.

I have given some thought to that since Wednesday last—and you will recall that I had a talk with you after the Wednesday session.—Having that in mind I drafted the kind of answer I would like to give to the question. I am accustomed to think with pen rather than with my tongue, and the committee might prefer that I should let them have what I have prepared on this particular subject. Perhaps my answer might not be taken out of your time.

Mr. HEES: That is the only question I have to ask?

The WITNESS: It is a question I think many members would like to have answered. I wish we could get away from the use of that unfortunate word "loss-leader", because it has been given so many meanings that it no longer has any. As it has been used, even in these hearings it can mean anything from giving the goods away to selling them for a cent below full list price. I am as guilty as anyone in using the term, even in these hearings. But I have always thought of it as a practice of selling goods below invoice cost with the object in view of driving competitors out of business. I have no sympathy with such a practice, as I said in my evidence on Wednesday last (p. 413). But I went on to condemn selling below invoice cost if it was "for the purpose of enticing people into the store". Of all things to say! "Enticing" has a rather sinister sound, it is usually sinners who entice, but it could have the same meaning as "attracting". And surely it should not be a criminal offence

for a dealer to attract people, or entice them, into his store even by offering them some of his goods below invoice cost. I wasn't misreported—I just didn't express myself fully enough or accurately enough. Of course in using "enticing" instead of "attracting" it is clear enough, to me at any rate, that I had in mind the sinfulness of the motive.

The CHAIRMAN: I hear our division bell. Mr. McGregor may mark his place and we will continue after the vote.

The CHAIRMAN: Mr. McGregor will continue from the point where he was interrupted in answering Mr. Hees's question.

The WITNESS: Not that it matters so much what I thought or said last Wednesday or in 1948 or now. But I would like to make the record clear now that the kind of selling below cost that I am against is the kind that is designed to injure competitors and drive them out of business in order to secure the whole market for themselves. For lack of a better descriptive phrase may I refer to that as "predatory price-cutting"? We have found such a policy adopted by some groups and we have reported against it. I have not found evidence of a single dealer adopting the practice except in one instance and that was by a single firm that achieved monopoly by several devious methods including this one. We had clear documentary evidence of the purpose. We reported against the practice, the court convicted and the case is now in appeal.

In that particular instance Section 498A of the Criminal Code would have been applicable, but the Combines Act was applicable also, to that and to much more. The Combines Act as it is now can deal with "predatory price-cutting" by combinations or single-firm monopolies. I think it would be desirable to have other legislation to deal with individuals adopting the same practice if there were sufficient evidence to show that it is an evil serious enough to call for legislation to prevent it. Frankly I don't think it is such a menace. Certainly no evidence has been brought before this committee that at the present time any individuals are indulging in "predatory price-cutting". You have been told what happened years ago and what will happen if resale price maintenance is outlawed. You have been told that dealers are selling below full list prices and selling below prices which their competitors consider are reasonable prices.

Mr. BEAUDRY: Mr. Chairman, I would like to raise the same point of order as earlier, please, and I would point out, to support my point of order, that we have recalled the witness to question him on his brief after we had time to read his brief. Now he is submitting a very considerable addition to that.

The CHAIRMAN: Mr. Hees asked Mr. McGregor a question. Mr. McGregor said "I have the answer to that question in writing because I think it is quite an important question and because I think better if I write than if I speak, and I would like to have the permission of the committee to read it." Mr. Hees was willing and the committee was willing. It was Mr. Hees who asked the question and the answer is being given on his time. You might continue, Mr. McGregor.

The WITNESS: But what evidence has been presented to show that any one of the 140,000 retailers in the country has been selling goods below his own invoice cost for the purpose of driving competitors out of business in order that he may acquire a monopoly over any line of goods or over any single commodity?

This cry of "predatory price-cutting" harks back to a day when there may have been some justification for some action. It was on that excuse that the whole system of resale price maintenance was founded. I am thinking of the days when the chain stores entered the field and made changes which revolutionized our whole retail distributive system. But the chain store is not what



it used to be. In order to establish itself in the market, spectacular devices were employed, such as deep price-cutting on a few articles. Examine the advertising of the chains today and you will find that "extreme reductions of price upon particular items appear to have been replaced by shallower price reductions upon larger numbers of items". The chains started off as revolutionaries. In their mature years they have become, like many individuals, rather orthodox—I won't say reactionary. Perhaps "reactionary" is the word to describe an attitude that is reflected in the position which many American chains are taking on the subject of resale price maintenance. Some of them are now among its strongest proponents. If Canadian chains follow their example—I question if they will—the day may come when another merchandising revolution will be needed—it might take the form of a really widespread co-operative movement that would be as efficient as the best of the local co-operatives, or it might be something else that no one has dreamed of yet.

*By Mr. Hees:*

Q. This is all very interesting, but I am afraid at the end I might not have enough time to clarify the points I was really asking about. Mr. McGregor, you pointed out that at the present time, in your opinion there has not been much loss-leader operation?—A. Loss-leader within the definition that I have given.

Q. I think that is quite true, Mr. McGregor, because price maintenance has made loss-leadership pretty well impossible, because people cannot use branded goods as a loss-leader under present price maintenance, and for that reason retailers think it is a good thing, but what I am asking is that if resale price maintenance is abolished do you not think it would be desirable and necessary to have legislation dealing with the loss-leader, practice, too?—A. But there is very little in the way of predatory price cutting in the grocery trade, where resale price maintenance is a very inconsiderable factor.

Q. Well, branded lines which are price maintained are the easiest things to use as loss-leaders, because everybody understands a certain type of soap, a certain refrigerator, and they might fear that the abolition of price maintenance is going to make loss-leader practice infinitely more likely and easy when price maintenance is taken off. That is the thing that I am worried about as well as many of the retailers in my riding, who are very worried about that practice.

Mr. CROLL: Should we not get the complete answer on this very important subject?

Mr. HEES: As long as Mr. McGregor will deal with that point at the end I will be very happy to hear what he says, but I wanted to get that clarified.

The CHAIRMAN: It was in Mr. Hees's question time.

The WITNESS: I have very little more to say:

No, I don't think "predatory price-cutting" is practised to any considerable extent in Canada today or will be in the immediately foreseeable future. When there is some definite evidence that it is widespread and serious in its effects, then will be the time to draft and pass legislation. Those who have made any effort to shape such legislation realize how exceedingly difficult it is to provide against an occasional damage to one group in the community without doing much more serious and permanent damage to the community as a whole.

Much of the legislation which has been enacted to prevent "predatory price-cutting" strikes at the roots of competition, not merely at one offshoot of it". But even when it is passed it provides the dealers with nothing like the protection on which they have built their hopes. Indeed it would in many instances work against their interests. In British Columbia they have minimum



price legislation, but even the Secretary of the Canadian Pharmaceutical Association told you (p. 159) that he did not know anything about it. And that was from the full-time representative of a group that is pleading to be protected from "predatory price-cutting". That legislation has been part of the British Columbia statutes since 1937. My own opinion of the reason for its not being used to prevent "predatory price-cutting" is that there has been nothing of the kind to prevent. If there were, why have those who have been suffering from the practice not invoked its provisions?

*By Mr. Fulton:*

Q. It does not work.—A. It has been in effect since 1937.

Q. It just does not work. It had to be made so full of holes it just does not work.—A. That is the difficulty of producing any bill that will work, and that is the point I am stressing here. It is exceedingly difficult to draft legislation that will prevent these practices we have in mind and still not injure the public in a serious way.

Q. You said on Wednesday, in answer to a question from me, that it could be done. You are not now going back on that, are you?—A. I said that lawyers should be able to produce something. I still think they may. We were not able to do it in our struggles with the problem.

*By Mr. Hees:*

Q. Mr. McGregor, you think that when price maintenance is removed there will not be much loss-leader trouble. I think, and a great majority of the small dealers think, there will be, and for very good reasons. They think it would be very desirable to draft such legislation, and you say it would be desirable if it could be done.

A. It would be desirable if we had evidence that such a serious condition exists or is threatening.—Q. Well, I think that the conditions will exist immediately that price maintenance is removed, and it does not take very long to put small dealers out of business. In fact, by the time we realize it is bad, call together a committee, hear witnesses and draft legislation, it is going to take a long time. Do you not think it would be a good time, before this legislation is passed, to see if we could not work out some legislation mitigating against loss-leaders?—A. If all this is going to happen, why has it not happened in the grocery trade?

Q. I would like to answer that, Mr. McGregor; because it is a lot easier, as you know, to advertise a branded article as a loss-leader. Everybody knows what they are going to get, but they do not know what they are going to get when they get carrots or potatoes or steaks, advertised at a certain price. It is far easier to bring people in for a branded line.—A. But there are plenty of branded lines in the grocery stores.

Mrs. FAIRCLOUGH: There is quite a bit being made on this point, but anybody in the food distribution business knows that there are no loss-leaders there because the margins in the grocery trade are so very narrow there is no room for loss-leaders.

The CHAIRMAN: I think it is just about the end of your time, Mr. Hees.

*By Mr. Hees:*

Q. I still think, Mr. McGregor, that it would be a very desirable thing, and all the small dealers that I have come in contact with—and I have come in contact with a lot—are all very anxious that this thing should be given very serious consideration; I do not think it would be a good thing to wait till the thing develops. I think we would be well advised to spend some time to find out if we could not work out some workable legislation, and if we could,

I think it would take a lot of sting out of this forthcoming legislation that is going to go through.

The CHAIRMAN: Mr. Jutras.

Mr. CROLL: Is the witness not going to finish his answer?

Mr. JUTRAS: If he is not through with his statement, he can use my time to finish it.

The WITNESS: I should like to conclude my comment on Mr. Hees' question by saying that it is surprising that trade officials who are anxious to prevent "predatory price-cutting" do not even know of the existence of the British Columbia legislation? It all goes to strengthen the position I have taken that the benefits of this kind of legislation to the retail trade are illusory. They look promising on paper, but they just don't work.

Mr. JUTRAS: That is all, thank you.

The CHAIRMAN: Mr. Boucher? He must be still away. Mr. Shaw.

*By Mr. Shaw:*

Q. Mr. Chairman, it has been argued before our committee that the prestige of the manufacturer is adversely affected by reductions in the prices that he has set for his products under resale price maintenance. Would you give the committee your opinion on that?—A. One comment I would like to make on it is this, if the prestige of a manufacturer is maintained by maintenance of the price, presumably an increase in the price would increase his prestige. Then if his competitors find that their prestige is less because someone else's price is very much higher, they might be tempted to increase their prestige by increasing their prices. It then becomes competition for prestige, a kind of competition that increases cost. I think consumers might be interested in knowing how much prestige they are paying for in the price they pay for their goods. I should think some competitive pressure would squeeze out a lot of the prestige that is included in such prices. One thing that the manufacturer who is interested in maintaining his prestige must have in mind when he increases his price: he must not increase it to such an extent that he will "prestige" his goods out of the market. I referred to this in my evidence in 1948. That is not the only or the principal reason why the manufacturer is adopting the practice of resale price maintenance; in many instances it is because of pressure brought to bear on him by retailers. He may yield to it with the idea of receiving the good-will of the retailers. That leads at once to competition amongst manufacturers for the good-will of the retailers. One manufacturer gives a retailer a 25 per cent margin when another is giving only a 20 per cent margin, if he does not come up to the higher level retailers will not have the same interest in pushing his line.

Q. Trade associations in practically all cases when referring to resale price maintenance refer to suggested list prices. As they have appeared before us this picture has unfolded itself; on the one hand the manufacturer says the word "suggested" is very mild and they admit under questioning they would withdraw their goods from him if he cut the price and possibly put him out of business. Others, as the Canadian Manufacturers' Association this morning said, have no enforcement and if the retailer wants to sell at a lower price he can do it. Now, what have you to say about enforcement of manufacturers of the list price under resale price maintenance?—A. Many manufacturers are not keen on adopting the policy in the first place. Very considerable pressure is frequently brought to bear on them and some of them go so far as to agree that they will suggest a price. In some cases that is sufficient where the dealers in the particular trade are not of a mind to compete. You cannot make men compete but you can make conditions that will make it very difficult for them not to compete. There may be some within the group who will



compete; it may be only one, but even one can upset the apple cart by starting to quote lower prices. A suggested resale price is not condemned under the draft bill here. I think there will be a lot of dealers who will take that as their cue and will follow the suggested resale price, but they won't be able to hold it if any active price competition develops within the trade.

Q. Referring to what has already occurred, would you say there has been a rather rigid form of enforcement of resale price maintenance by manufacturers generally?—A. I probably know more about the drug trade than the others. I have had to do with it since 1925 and from time to time in my experience it was very rigidly enforced, but in some cases even within that trade they were very lax in their enforcement measures. Generally speaking there is a great deal of difficulty enforcing action within the trade. If there is laxity and prices are not holding, then pressure comes from the trade on the manufacturer to get him to do something about it.

Q. In pursuing this I may suggest to you this is one aspect of the whole thing that bothers me very greatly, this private law enforcement. Now, you indicated in the course of your previous evidence that in 1925 you observed the practice of resale price maintenance.—A. That is in the drug trade.

Q. You were combines commissioner, I believe, for twenty-three years?—A. Registrar first and commissioner later.

Q. Did you observe a progressive increase over those years in the expansion of resale price maintenance, was there more or less a regular increase from year to year, was it a growing thing?—A. I do not think I can say it was an increase was observed from year to year. We thought we recognized some recession in the practice after the P.A.T.A. case, but we did see the movement develop as fixing of prices by individual manufacturers succeeded the overall arrangement that was found under P.A.T.A. where manufacturers, retailers and wholesalers were all in the same association. It was not a case of year to year—decade to decade, if you like.

Q. A progressive trend in that direction?—A. Yes.

Q. Did you at any time feel sufficiently concerned about it that you had occasion to recommend legislation?—A. No, we gave it a lot of thought but never came to the point of recommending legislation.

Q. Would that possibly result from the fact that under the Combines Act as it stands today you couldn't do anything about it if you wanted to?—A. I thought we could do something under the Act as it was, and in the years following the war we were faced with a number of very serious cases of other types. We had specific cases that were demanding attention and you will remember the several cases that were developed in 1947, 1948 and 1949. In that period we did give thought to resale price maintenance but it was always in the in-between moments of a pretty busy life.

Q. But you did feel that a sufficiently serious situation had developed so that action should be taken.—A. Very definitely in our thinking in 1948, and if we had had nothing else to do but work on resale price maintenance we would have come through with the kind of recommendation you have here.

*By Mr. Murray:*

Q. Were you ever in the retail drug business?—A. No, sir.

Q. I want to say while you have not been very friendly to us and our position I am not going to speak the same of you. I want to say to you first of all the public will justify the position of the retail druggist in the economy of Canada today, and notwithstanding what you have said we are performing a professional service for the health and well-being of the people of this nation.

Now, I want to say, Mr. McGregor, this quotation, "eliminating price maintenance is expected to have little effect on cost of living." This view is credited to our Prime Minister as quoted in the *Globe and Mail* of November 21, 1951.



Do you agree with that statement?—A. Mr. St. Laurent had in mind, I presume, that a very inconsiderable number of items that are included in the cost-of-living index are in the price maintained area. After all, resale price maintenance does affect only one segment of all retail selling.

Q. What percentage?—A. I have heard estimates from 10 to 15 to 30 per cent.

Q. You don't know definitely?—A. No, I don't.

Q. Do you still agree there is an honoured place for the small business man in the community, the grocer, the baker and even the druggist?—A. As the son of a retail grocer, and I am very proud of it, I have a lot of sympathy, not sympathy in the sense of pity, but a lot of fellow feeling for the people who are in the distributive trades, and a real appreciation of the kind of necessary work they are doing in that field. I do feel they are doing much for the community, but I do feel those whose volume of business is exceedingly small are not getting a living out of it anyway and it is no kindness to them to encourage them, by restrictive measures, to carry on. Even a man doing a \$20,000 business a year and fifty per cent of the druggists were doing less than that in 1941, have not much of a living from it.

Q. I notice a statement on page 10 of your brief in which it says that for years grocery stores and independent retail groceries were not eliminated, they are still going strong. I find it hard to believe that, sir. In my own city today—formerly there were nine independent retail grocers who were in the business section of my city, and there are now but two. In view of that it is hard to believe the statement you have given.—A. I have a record here that appears in the Canada Year Book as to the number of commercial failures in the food trade. In the year 1949 there were sixty, and that is out of 48,468 retailers across Canada. There were forty-five in 1948, twenty-five in 1947, five in 1946 and seven in 1945. In that same period the commercial failures reported in the same pages of the Canada Year Book show one commercial failure in the drug trade in 1949, one in 1948, one in 1947, one in 1946, none in 1945 and two in 1944. In view of that I do not see why one is not justified in saying they are still carrying on. It may be going too far to say they are still going strong, but they are still carrying on business.

Q. I have not a keen scintillating mind like members of the legal profession such as Mr. Phelan and Mr. Favreau, but take an elementary proposition. Supposing you are a clerk of mine and supposing this predatory price cutting has reached serious proportions, suppose you come into the store and I have two types of tooth paste, one a nationally advertised, well known, consumer accepted, but by reason of this predatory price cutting it has reached the stage where there is no money in it. What are you going to do when a customer comes in your store, will you just show that and display it, or are you going to show him this tooth paste on which you make a greater percentage of profit? Which one are you going after if you are in my position?—A. I should think I would go after the one I was getting the most out of.

Q. You might even go to the extent of not displaying this article, not even merchandising it or showing it?—A. No, not that far.

*By Mr. Murray:*

Q. I suggest to you that has happened and it could happen again?—A. Well, if there is evidence that predatory price cutting has reached that stage, or when there is evidence it is likely to happen, that is the time, I suggest, to consider shaping legislation; but I think you should have in mind the difficulty of producing legislation that will prevent that and that alone—and not do a lot of harm in other directions.

With respect to the practice of selling below cost, right here in Ottawa, on December 4, retail grocers are selling some of their lines at less than cost plus 5 per cent and it is a regular practice.

Hon. Mr. HORNER: Turnover is the answer there.

Mr. BEAUDRY: On which lines?

Mr. CROLL: If you are losing on all lines or on a great number of lines how do you make up on turnover?

The CHAIRMAN: Mr. Murray, will you continue, you have two minutes.

*By Mr. Murray:*

Q. Mr. McGregor, then I take it you do not think it right or fair to jeopardize this manufacturer who has built up a quality line, has advertised it, and has given it consumer acceptance over the years?—A. I do not think there are any special provisions which should be made for the protection of the manufacturer. In putting out his lines he takes his chances with everybody else in the market.

Q. But if I in turn do not show it and display it, am I holding good faith with him?—A. I did not say I would do that if I were a clerk in your store.

Q. Well, we are in business to make a profit and if this item is not going to make me a profit I am going to feature one that does.

Mr. CROLL: Hurrah for private enterprise.

*By Mr. Murray:*

Q. Let me put it another way. Supposing I hired you to manage my store—and I may have to if this thing goes through— —A. I am not available, sir.

Q. Well, supposing you were available and supposing I did hire you, you are going to have to handle cigarettes in my store at 10 per cent; you are going to have to handle a lot of medical supplies for the doctors of my community at 15 per cent; you are going to have to handle a lot of these patent medicines, cosmetics, face powders, and all the rest of it—at I do not know what price. Today, the present rate is approximately 33½ per cent but if this obsession of yours is given sway that percentage will be considerably cut. It is true that you are going to sell a lot of pharmaceutical specialities at a little higher percentage but the whole thing adds up that you are going to have to have a gross margin, taking the year 1950 figures as compiled by the Dominion Bureau of Statistics, of 28·9 per cent?—T. To cover your costs?

Q. That is gross margin.

Mr. HEES: With that you would just break even?

Mr. MURRAY: No, that is gross margin. Operating expenses according to the bureau were roughly 17 per cent last year.

The CHAIRMAN: Your last question Mr. Murray.

*By Mr. Murray:*

Q. Well, my question is if you are going to take this great percentage off these items where are you going to make it up? We handle over 10,000 articles in a drug store today. It has been said that 60 per cent of that number is in the price maintained field. I cannot see any other alternative but that you are going to have to put up the price on the other 40 per cent in order to stay in business?—A. If you can put them up in the face of the competition you have from your competitors? But you spoke of 28·1 as representing your gross margin. Your operating costs are what part of that?

Q. 17 per cent?—A. 17 per cent. Well, does that mean a net of 11·1 per cent?

Q. No, the net would be 11·9 per cent, not including proprietor's salary, and not including income tax.—A. Yes. Well, I would look at it this way. You say that you must get your costs out of the business. Costs are one thing



under one set of circumstances and another thing under another. If there is pressure to bear on your prices, downward, you may find you will have to trim your costs somehow or other. That is done.

If a person's income were \$4,000, his cost of living would probably come close to that figure. Then, Mr. Abbott comes along—

Mr. CROLL: And Mr. Sinclair. Do not forget Mr. Sinclair.

The CHAIRMAN: Just a loyal follower.

The WITNESS: Let us go back to the days when income tax was increasing. In those days your income was just about equal to your costs and you did not know how you could get along with less. Mr. Ilsley came along and said, in effect: your income is reduced by \$500—the tax you are going to pay. Because there was irresistible pressure from some other direction on my income I found ways and means of bringing my cost of living down to the lower level—just as the business man must find similar ways when the competitive pressure is brought to bear on his costs.

In the coal enquiry we made in 1933, we employed accountants and we spent about \$25,000 to find out the cost of importing and distributing a ton of coal. The profits were recorded as about 59 cents a ton—the price being about \$14.50 a ton. A couple of years later another investigation was made, by Dr. Tory. He made an investigation with his accountants and it was shown that while costs had increased by nearly \$2 a ton, and the price had declined about \$1.50—from \$15 to \$13.50—there was still a net profit in the business of 25 cents a ton.

What happened was that pressure was brought to bear on the cost; and one thing that happened was that suppliers in England cabled to the importers in Canada to say: Now, since you have not got the control of the market you used to have, now that these agreements to control prices are no longer effective, we will give you a reduction of two or three shillings a ton. They did—and administrative and other costs were cut.

Until that pressure of competition is applied to prices, the costs are likely to remain the same.

Q. I appreciate your comment, Mr. McGregor, but I think as a merchant today we are all fighting two forces—higher costs on the one hand, and also a diminishing spread on the other. That is why I cannot see where your theory is going to be compatible with still carrying on.

The CHAIRMAN: Dr. Blair.

*By Mr. Blair:*

Q. Mr. McGregor, when you were talking about the drug trade you made reference to the wiping out of the small inefficient drug store. I judged, after some of your remarks, that some of these drug stores have not had a large volume of business over the years. I suggest to you that some of these smaller stores are in the outlying districts where it is necessary to have drug stores; and some of the drug stores may have had to go into other lines of business such as selling magazines, and other things that do not appear in some of the larger drug stores. Would it be wise and in the interests of the public if these small and so-called inefficient drug stores were wiped out?—A. I might point out that I did not use the word "inefficient". I did use the words "small volume".

Q. I got the word "inefficient" somewhere?—A. I may have used it but I try to keep it out of my vocabulary in regard to the trade. "Incompetence" was used in the table I quoted from Dun & Bradstreet, and perhaps that is where it came from.



Q. Yes?—A. It is quite true that in these outlying districts certain drug stores may be very important. Probably they can get along and they will not be one of the low-volume dealers that I referred to. That druggist can get along because he has some other sources of revenue through carrying on another kind of business.

Q. My second question is that there was a time when a drug store was called an apothecary's shop. It dealt mainly in drugs and prescriptions. However, I find a change and the druggist no longer mixes up powders or ointments, and in a great many cases he does not fill liquid prescriptions. Nor does he make pills according to a doctor's prescription. Would it be wise, in your opinion, to have grocery stores handling drugs—even patents or proprietary preparations? I might mention Pabulum. Very often a doctor will write a prescription for a certain type of baby food. It may be some form of milk, or it may be Pabulum or that sort of thing. Would it be wise if a lot of these things were gradually turned over to the grocery store? I might give you an example. I have always felt that a tablet such as A.B.S. & C. should be sold under direct supervision because every once in a while you will get some child suffering from strychnine poisoning. A lot of these preparations, if they fell into the hands of the grocer, would lead to a more or less dangerous condition. I admit that country stores will have to carry veterinary products, and they also carry some so-called patent or proprietary preparations. But, would it be wise to let grocery stores handle those in competition against the drug store?—A. I think that would be a matter for those who administer the Food and Drug Act. Already the state has prevented, and wisely presented, any other than drug stores carrying certain kinds of drugs. I should think those people would be the proper ones to make a decision as to whether that list should be expanded or not. However, I do not think that many of these items such as are now being carried in the grocery stores should be sold exclusively in drug stores.

Q. Well, some grocery stores, with the exception of the people in country areas, are gradually going in other ways. I call your attention to the fact that a druggist is a man who has had to put in a period of apprenticeship. He has had a four year course at college and is it not reasonable that drugs should be sold by druggists and it gives more efficient protection to the public if a druggist and not a grocery clerk handles those things?—A. I do not think they need to be professional men...

Q. I am comparing the druggist with the grocery clerk. After all, the druggist is a trained man?—A. But you do not need a trained man to sell a package of Kleenex or even a package of Pabulum, or a bottle of aspirin if you like. When a person goes into a drug store to buy a bottle of aspirin the drug clerk does not refuse to sell it to him or give him advice as to whether he should have it.

Q. I suggest to you that there are no longer apothecaries and they have had to take on additional lines to make a living. Is that not true?—A. Yes, I agree with that.

Q. There was a suggestion about drug stores demanding full list price, and you are aware that you can have a prescription or medicine of much more value when made by one firm than another. I will cite a case that is common today—vitamin B complex tablets. There are houses who are putting up that preparation and I might mention a few of the ethical houses like Squibbs, Burroughs, Parke-Davis, where the prescription is placed on the label and it is exactly the proper prescription. However, chain stores like Eaton's will sell vitamin B complex pills at a quarter of the price and the public say: Oh, that is vitamin B complex.

That brings us around to the question of standardization of drugs. Let us suppose that we have a heart case—a man who has some form of digitalis. I may, and I very often do, put at the bottom the name of a certain company because I know their product stands for something. I could get digitalis at one-third of the price at some other drug store, or the druggist might substitute some other company's product. I want to be sure that the patient gets the full standardized dose of that drug in order to get the best effect. A tincture of digitalis could be weak as far as this standardization is concerned, and it is a very important thing that the patient gets the proper dose of the medicine. That might apply to other things, like liver extract. The field is full. Many of these companies put these products out with a price on them. For instance, a case of Vitamin B Complex, do you not think it is better that they get a standardized product that has the name of an ethical drug firm on it?—A. The doctor will prescribe Squibbs, and not XYZ.

Q. Yes, but the patient sometimes goes in—and I mentioned Vitamin B Complex—the patient goes into drug store and they will tell you later “Well, I saw this in Eaton's at a quarter of the price”. Do you not think that the fixed price there stands for the integrity of the house that made it?—A. I would like to know more about what the cost of production was in the first place, of the cost of the ingredients and just how much the element of prestige is included in it; many, many people buy Bayer's aspirin just because it is 79 cents and will not buy any other at a lower price.

Q. We won't enter into a question of Bayer's aspirin and spend 20 minutes on that. That was a matter of trade mark; the Bayer people let the public use their aspirin for 20 or 25 years and suddenly closed down on their trade mark, so other firms had to put theirs up with a different name on it. It might be called A.S.A. tablets or Acetyl-salicylic acid, grains 5. That was a matter of trade mark.

The CHAIRMAN: This is your last question.

Mr. BLAIR: I come back to this one.

Mr. FULTON: Mr. McGregor has agreed that it would be better to have facts and figures on costs.

The CHAIRMAN: On the cost of aspirin, or certain products.

*By Mr. Blair:*

Q. My last question is on this matter of pharmaceutical specialties apart from proprietary or patent medicines. Now, there are many good ethical firms who put up what they call their own specialty, and the prescription is on that, and I suggest to you that I know some of these; I know of one firm in particular where they have not changed the price of their product in 25 years. It is a fixed price, but they have not changed it, and in the matter of proprietary medicine—I am not going to talk about proprietary or patent medicine, but one has to admit that sometimes they might have some value and at other times you do not get what you pay for, but in cases of these specialties I checked up and went to the trouble to get some information about these things, and found out that some of these good houses have never changed the price of their specialty, although it sells at a fixed price.—A. You say that is over a period of many years?

Q. I know one firm hasn't changed the price of their product for over a period of twenty years.—A. I would suggest they must have had a healthy margin to start with, considering the costs that have increased over the years for labour and everything else.

*By Mr. Fulton:*

Q. What about increased turnover due to national advertising, wouldn't that be an equally important factor?—A. It would have its effect.



*By Mrs. Fairclough:*

Q. I would like to suggest to you, Mr. McGregor, the figure you gave with regard to commercial failures may be augmented to a marked degree by those people who do not go into formal bankruptcy but merely close the door and pay their debts. I think when you get into the field of very small retailers that is a very common occurrence. He sees he is going and he doesn't wait until he sees his debt is so large that he is forced into bankruptcy. You have no records of those so these figures you gave can scarcely be construed as a correct statement of the failures in the country.—A. It doesn't include settlement cases, and there may be many, as you say.

Q. You were speaking of 236 drug stores with a volume of less than \$5,000. Would you say all these were self-contained drug stores depending only on the drug trade or would they be departments of large stores?—A. They may be in country areas run in conjunction with some other branch of business and that is the kind of thing that would not disappear.

Q. Nevertheless you made the statement that it may be just as well if these people were out of business because they are not making a living.—A. The ones not making a living are the ones that may have difficulty in carrying on.

Q. But you did speak of these 236, and you mentioned some others with a volume under \$10,000, and intimated it would be just as well if these people weren't in the business because they weren't making a living?—A. I said they might decide to get out because the return wasn't sufficient.

Q. The intimation was there however it was worded. I would suggest since there has been a considerable discussion as to the restriction of competition, if you are going to encourage these people to close up you are going to have fewer outlets for goods and if you have fewer outlets you have less competition because the competition centres only in the large centres and in large stores.—A. Of course you have competition between the large stores and the small stores, and between the large and large.

Q. And the tendency then is to concentrate on the large stores?—A. Not all businesses. As far as chains are concerned you would know more than I do about the percentage of business done by chain stores; they have increased gradually from the twenties and I think probably they have reached the peak now.

Q. In following up what has been said by other members of this committee this afternoon, I think the idea is abroad that definitely you would approve of the elimination of these small businesses?—A. Not approve, I am saying automatically they will disappear on their own.

Q. You say automatically they will disappear, but you support this legislation which is going to make them disappear.—A. I think the ones who are going to disappear are the ones who have not been getting sufficient returns. If a man is only getting \$1,000 or \$2,000 he may be induced because of the small return to withdraw from that field.

The CHAIRMAN: One of the members points out the figures given by Mr. McGregor earlier were the 1941 figures on the number of drug stores which had a volume smaller than \$5,000 and \$10,000.

The WITNESS: It was from the last census, which we had in 1941.

*By Mrs. Fairclough:*

Q. This wouldn't obtain today because 1941 was an entirely different period. Proceeding along the same line, what is going to happen to these people who close up? I think all of us have within memory the period we went through between 1941 and 1946. In that period the consumer was the victim of short supply in many lines of goods and we had an elaborate association set up to ensure an equitable distribution of goods. Now, if these small people are



thrown out of business, and we once again get into a period of short supply, it will mean that the people who live in remote areas and those who live in small communities would have a far less chance to receiving their proper proportion of goods.—A. The period 1941 to 1946 was a period of emergency that was created because of war conditions. If that occurs again I think you will have to change the whole type of control, as we did in 1941, from a competitive economy to one of direct government price control and control not only prices but rationing of goods.

Q. You cannot very well set up the stores that have gone out of business in the meantime to handle goods that are in short supply. One of the highlights in the last war was the very efficient manner in which goods were handled and distributed to all parts of Canada, and they could not have reached the consumers save through the hands of the small business man who, himself performed a service in that community by saying, "I am going to make sure that Mrs. Jones gets her share and Mrs. Smith gets her share." They made sure people did not go from store to store and take articles home and store them in the cellar. There were a great many goods in short supply at that time that were not rationed. I think there is more to this problem than whether or not the manufacturer is allowed to protect his profit by naming the price.

The next question I would like to come to is this: if I am not mistaken you alluded to it being an offence, or the legislature would make it an offence to maintain the price on an article. What would you do in the case of a manufacturer who is his own distributor, and I cannot think of any specific example that is better than that of a large department store which has its own brands and its own manufacturing facilities. If it is an offence under this proposed legislation to name the price, how are you going to handle the manufacturer who manufactures the article and sells it in his own store and undoubtedly names his own price and figures his own spread?—A. He is not fixing resale price, he is fixing his own sale price. The manufacturer has the right to fix his own selling price, and a manufacturer who has his own distributive outlets has the right to fix his selling price.

Q. Mr. McGregor, I suggest the ultimate aim of both manufacturers, whether they have a retail outlet or not, is the same? That is to sell their article, and, if to sell that article it is to their advantage to put upon it a brand name, or advertise that brand name and to set an end price, then who shall say the manufacturer who has no retail outlet is less than the manufacturer who has a retail outlet?—A. You are setting up another series—you are setting up for one thing the wholesaler in between, and the retail establishment. Now, the manufacturer who fixes his own resale price right through is taking the responsibility for the distributors' cost of operating. He determines what this margin should be.

Q. I suggest that he takes them just the same. He has his own warehousing facilities and he can deliver his article directly from the machine that manufactures it to the counter that sells it. He has to have his own warehouse and his own distribution pattern regardless of whether he puts it through a wholesaler or retailer or not?—A. Yes.

The CHAIRMAN: This is your last question, Mrs. Fairclough.

*By Mrs. Fairclough:*

Q. All right. You mentioned a while ago that you were not opposed—I think you said you were not opposed, or I guess the report was not opposed—to "suggested resale prices". There was some discussion as between suggested resale prices and strictly maintained resale prices. Some prices which are suggested may be rather rigidly maintained, and we know there are a number

of prices which are merely suggestions on behalf of the manufacturer and the retailer is not forced or protected by the manufacturer, but those will not be covered by the proposed legislation.

Now, to what extent would you think control of suggested resale prices might go? To the extent of placing a price on a product?—A. It might be, yes.

Q. Would you think it would not be illegal under the proposed legislation to put a price on a label or a bottle or a shirt?—A. No, under this particular proposal it does not seem that it would. This bill does not go the whole hog but it may be that it would prevent the enforced price. There is still a lot going on in suggested prices where really competition is not working and you might later, in a few years hence, find it is doing damage and have to deal with it.

Q. You say that the next step may be the abolition of the suggested price? —A. It may be that a situation will develop where competition is not working. Perhaps not, and if not I think it should be left free. As long as a man is free and does not have to adopt the suggestion of the manufacturer, then I think probably it is better to have the form of the bill as it is here.

The CHAIRMAN: Mr. Croll?

Mr. CROLL: Mr. McGregor, will you for a moment enlarge on your definition of "predatory price cutting"?

Hon. Mr. HORNER: We had that over at great length.

The CHAIRMAN: Senator Horner, Mr. Croll is entitled to his five minutes or ten minutes just as is any other member. He may ask a question if something is not clear to him. There have been many questions that needed elaboration.

Hon. Mr. HORNER: I suggest that the witness is taking up too great a length of time. We had an investigation this morning where the witness was directed to say yes or no.

The CHAIRMAN: I had the peculiar idea that the witness was before us to give us information. He is here for the purpose of being questioned in that sense; we are to elicit information from him.

Hon. Mr. HORNER: This conversation is very interesting but it is not getting on with the work. He might answer the questions more quickly.

The CHAIRMAN: Will you continue your questioning, Mr. Croll?

The WITNESS: I did refer to predatory price cutting as any selling below invoice cost for the purpose of—

*By Mr. Croll:*

Q. Achieving monopoly?—A. Achieving monopoly in the end, or driving out competitors and achieving monopoly.

Q. Well, following some of the questions put by other members—you have read the minutes I presume? You have been following the committee reports? —A. Not all of the evidence. I have not been able to keep up with it.

Q. One of the things that worries me and worries some of the members of the committee is the statement that the brief presented by Eaton's; and the statements in the telegrams—correct me if I am wrong Mr. Chairman, if I have not the right names: Eaton's, Morgans, Hughes in Hamilton, and was it Murphy-Gamble in Ottawa? And one other?

The CHAIRMAN: Calps, in St. John.

Mr. CROLL: Those are five large departmental stores who took it upon themselves to wire this committee indicating that they were in favour of the legislation.

The CHAIRMAN: Excuse me, they did not wire the committee but they wired the president of their association.



Mr. CROLL: Yes, and he conveyed that to the committee. Would you comment on that, Mr. McGregor? It is a worrisome matter to us?

Mr. FULTON: Why does it worry you?

The WITNESS: They are only half a dozen of the members of the Retail Trade Federation but they are very important members. Their volume of business is very considerable but there are a lot of others—Hudson's Bay, David Spencer—

Mr. FULTON: David Spencer is Eaton's now.

Mr. CROLL: Yes, and the Simpson Company. Let us assume for the moment that they were not bold enough to wire or to instruct their association—

Mr. HEES: There were two whose names were not mentioned.

Mr. CROLL: I am assuming—

Mr. BEAUDRY: Why assume?

Mr. CROLL: Just let me put the question.

The CHAIRMAN: They said that was their view but they did not want their names—

Mr. CROLL: Do you remember Mr. Harris' evidence. I think he said he would liked to have commented but he did not feel that he should.

The CHAIRMAN: Let us have Mr. McGregor's evidence, and not Mr. Harris'.

*By Mr. Croll:*

Q. I am assuming for the moment that the others were bashful about informing their organization?—A. I would not know.

Q. No, no, but I am assuming that for the moment. These are five or six firms which have expressed that view and it is a worrisome matter for the committee—that these large departmental stores should be in favour of this legislation. They feel that there is something—'sinister' is the word in the sense I am using it, about this legislation.—A. The question?

Q. I am asking for your comment.—A. They are expressing their view, as any other large concern would, or any other small concern would.

Q. You presume it would be in their own interest?—A. Yes.

Q. Then we come back to the question—some of us cannot reconcile the interests of this very large group as against the interests of the small retailer. Now, we fear, as between the two, that your definition of achieving monopoly will likely bring that unless we give them some safeguards.—A. Such as preventing this type of practice?

Q. Yes, such as preventing this type of practice, exactly, that is my point.—A. Is it not a matter of determining what evidence there is that such a practice has been engaged in?

Q. You see, we have great deference for your views, Mr. McGregor, because for 23 years you were in all this. Do you agree with me on this—it is my view that the grocery chain has brought down the cost of living in that line.—A. It is my opinion, too. The chain method of distribution has eliminated a great deal of waste, and it has also increased the efficiency of many of the independent stores which are not chains.

Q. It is also my view that with respect to the department stores—and you know what I mean by department stores—that their mark-up in the main is larger than that of the ordinary store, and that they take it out of the manufacturer.—A. I have heard that said; I have no evidence.

Q. Well, did you ever come across it?—A. No. I am recalling the Price Spreads Inquiry of 1934-35, where there was evidence of this kind of thing.

Q. To that extent?—A. To?

Q. You say there was evidence before that committee at that time, that that was being done.—A. Yes.



Q. My suggestion to you, Mr. McGregor, is that the department store serves an entirely different purpose than the chain grocery does in the community.—A. Different, yes.

Q. Yes, and a less social purpose.

Mr. FULTON: What you mean, Mr. Croll, is the mail order department store.

The CHAIRMAN: It might be helpful if you emphasized the difference.

Mr. BEAUDRY: I hate to bring up a point of order, Mr. Chairman, but is that referring to anything in the brief originally submitted? It is also six o'clock.

The CHAIRMAN: I am glad you raised that. One speaker has indicated that he would like to ask a question and he has promised that he will not cover any questions that have been asked before. Is it agreeable to the committee that even though it is six o'clock Senator Horner can ask his question?

Agreed.

*By Hon. Mr. Horner:*

Q. Thank you very much, Mr. Chairman. Mr. McGregor, you have lived in a city all your life?—A. I was born in Ottawa.

Q. And you have never lived in a small community during an epidemic such as the flu?—A. No.

Q. I thought so, or you would never have suggested putting a small druggist with a small turnover out of business. I have seen places where a doctor was not available and the druggist was on the go day and night in many of the sparsely settled villages in Saskatchewan. There the druggist is very much in the forefront of things. Now, you have heard evidence from a druggist and a doctor. I am a person who raised a family and have always been able to secure from a qualified druggist medicine that was not available, only through a doctor who was not there. I would like you to consider these druggists in a different light. They are only existing now because of this resale price maintenance that you wish to abolish.

Another thing: What action would be taken, for instance, where a manufacturer who establishes a set price for his product under resale price maintenance, and if that is abolished and the retailer refuses to sell at that price, what action could be taken to force that manufacturer to continue to sell if that retailer had sold at a price at which the manufacturer did not believe he could make enough money to cover his invoice. Now, most business is done on a 30 day basis. You are going to call it a free economy where a manufacturer would be forced to supply a merchant who he knows is selling his goods at a price that would never enable him to pay him for his goods. Do you call that free economy?

The CHAIRMAN: I am just waiting for your question, Senator.

*By Hon. Mr. Horner:*

Q. Does he think it is a light matter to have a druggist put out of business in these small communities; and could he tell us how, in a free economy he would punish this manufacturer who refuses to sell to a man who in turn sells at a price that he cannot make a living at? Those are my two questions.—A. I would like to say for one thing that I did not treat it in a light way and I have never thought of it in a light way. The public may decide that they are not performing the service that is required. I did not suggest that I would put them out. It is not a matter of any government organization putting them out of business, it is the community deciding that the particular

services are not required, and the decision in the end is for the man himself. If he is not getting a sufficient return for his services perhaps he may do better to accept such a position as was offered to me a little while ago as a clerk in a Woodstock drug store. It may be they can better serve the public and themselves by engaging in some other occupation.

Q. I am speaking of the people to be served in the community; what about consumers, those in need of a druggist?—A. They are being served in every community in Canada and this is not eliminating them.

Q. I beg your pardon, they are not being served in every community in Canada. —A. Even under resale price maintenance?

Q. No, there would be many, many more out of business without this.

The CHAIRMAN: Now, are we going to start on the second round or stick to the 6 o'clock rule?

Mr. BEAUDRY: I appreciate your difficult position, but I also know your fairness and I have not had a chance to question this witness since I read his brief. Furthermore, through circumstances entirely beyond your control we lost approximately fifty minutes of this witness by reason of the fact the two votes happened on the two occasions he has been here, and I submit that normally we would have had the witness with us for an hour longer. I think we should have the witness before us again.

The CHAIRMAN: This point arises, as with every committee, as to how long we will go with any witness and I think the committee feels we have had two goods rounds with Mr. McGregor. My own feeling as chairman is we have had two adequate days with Mr. McGregor, who came voluntarily as a witness, and we should now proceed.

Mr. BEAUDRY: May I refer you to a citation, I think it is at page 557, referring to standing orders of the House which says any member of a committee may question any witness.

The CHAIRMAN: If you had attended as many committee meetings as many of us have you would know this.

Mr. BEAUDRY: I know, I have been an unfortunate person all my life.

The CHAIRMAN: After all, in this country we go by majority rule.

Mr. BEAUDRY: Yes, but also House rules.

The CHAIRMAN: I certainly feel a reasonable examination has been had of Mr. McGregor. If the steering committee which meets tomorrow at 3 o'clock feels it is in the interest of all parties of the committee and both Houses that Mr. McGregor be asked again to come forward, it will be so asked.

Mr. BEAUDRY: On a point of privilege, I am definitely not willing to defer to any member of the committee, steering or otherwise. It is my privilege as a member of the House of Commons to question a witness. It says so in the book.

The CHAIRMAN: It also says in Beauchesne, the book to which you have devoted so much study recently, that the chairman or the speaker has the right to put a cessation on—

Mr. BEAUDRY: Would you quote the citation?

The CHAIRMAN: I would have to get it—

Mr. BEAUDRY: I would be quite willing to take it from Mr. Burgess.

The CHAIRMAN: More than that, the chairman has a right to put an end to repetitive questions—as Mr. Burgess showed me this afternoon. I will also leave it up to members who have listened to your line of questioning—

Mr. BEAUDRY: Which ones? I have not put any questions since I have seen the brief.

The CHAIRMAN: I do not want to get into a hassle like this but the members will remember that Mr. Beaudry repeated one question three times.

Mr. BEAUDRY: And Mr. McGregor evaded the answer three times.

The CHAIRMAN: No; he said he did not understand it and no member of the committee understood it either, even after three repetitions.

However, tomorrow at 3 o'clock, the steering committee will consider your request that Mr. McGregor be recalled and we will report accordingly to the whole committee and the majority will decide. The meeting is adjourned.

The meeting adjourned.



## APPENDIX A

The Joint Senate—House of Commons Committee to consider the Interim Report of the MacQuarrie Committee appointed to study Combines Legislation. Gentlemen,

## RESALE PRICE MAINTENANCE

The Canadian Manufacturers' Association welcomes the opportunity of endeavouring to refute the arguments and conclusions on the basis of which the MacQuarrie Committee recommended "that suppliers of goods should be prohibited from requiring or inducing distributors to sell such goods at fixed or minimum resale prices".

*Resale Price Maintenance Does Not Make Prices Higher*

The first of these conclusions was that resale price maintenance has the effect of making prices higher than they would be otherwise, because it requires the efficient retailer to sell at the same price as the inefficient retailer. If there were no resale price maintenance, so the argument runs, the efficient retailer would pass on to the consumer in the form of reduced prices the economies he has effected in handling the goods. In other words, resale price maintenance denies the efficient retailer the advantage to which he is entitled over the less efficient retailer of getting more business, and denies the consumer the advantage of lower prices.

This argument seems clearly based on an assumption that the manufacturer fixes the resale price at a level which will enable the inefficient retailer to stay in business, at the expense of the consumer. The fact is, it is submitted, that the manufacturer in setting the resale price is not thinking in terms of providing an adequate margin for the retailer either efficient or inefficient; his problem is to set a price at which consumers will buy his product.

He knows only too well that if he sets the price too high, from a desire to protect the retailer or otherwise, his sales will suffer. There is a definite price at which consumers will buy a satisfactory volume of any article. That is the primary "fact of life" the manufacturer must face. The consumer's price, then, is something standing by itself depending on the price of competitive products and the willingness of consumers to pay. It has nothing to do with the relations between the manufacturer and the retailers. So far as that relationship is concerned, the manufacturer's objective is obviously to allow a margin for the retailer or wholesaler just sufficient to provide an inducement for enough of them to handle his product to provide a satisfactory volume of sales. All he wants to do is to sell his goods and if he can get sufficient retailers to handle his goods on a 25 per cent margin, he is not willingly going to pay a 30 per cent margin. For the retailer's margin is something that comes out of what the consumer is willing to pay, so that the larger the retailer's margin the less the manufacturer gets. In these circumstances, it is clear that the manufacturer will not allow any larger margin than is necessary. What the MacQuarrie Committee failed to realize, it is submitted with great respect, is that where the real difference in selling costs is found is between different types of goods rather than between different classes of retailers for the same goods.

If the governing consideration in determining the resale price is what the consumer will pay, and the manufacturer has no interest in protecting the inefficient retailer, it is difficult to see how resale price maintenance can have any appreciable effect in the way of making prices higher than they would be otherwise.

The MacQuarrie Committee's contrary conclusion that resale price maintenance raises prices and harmfully curtails competition at the retail level is based, it is submitted, on the assumption that the large volume retailer is necessarily more efficient than the small volume retailer. "The cost of distribution", it observes, "is a very substantial part of the price which the consumer pays, and changes which remove that part of the consumer price from the influence of competition seriously restrict the working of a competitive system". But the fact is that the large departmental or chain store, instead of operating at a lower cost per dollar of sales than the small retailer, requires as a general rule, more margin than the small retailer. The large retailer's method of operation is generally to buy at an appreciably lower price and sell at a slightly lower price, than the small retailer. Therefore the small retailer can compete on an operating cost basis with the large retailer and still be quite unable to sell at the same price as the large retailer.

*Resale Price Maintenance Does Not Improperly Restrict Competition*

A second major conclusion of the MacQuarrie Committee is that resale price maintenance "represents a real and undesirable restriction on competition by private agreement or 'law' ". "When measures of enforcement are involved", it states, "resale price maintenance establishes a private system of law allowing no appeal to the courts of justice". In support of this view, reference is made to a statement in a recent British White Paper to the effect that while a trader who charges too much and is proceeded against by the State under price-control laws, can always appeal to a higher court, the penal proceedings under resale price maintenance which may have the effect of driving a shopkeeper out of his trade,—“take place behind closed doors and without any supervision by the courts or by Parliament”.

As to this, it is submitted that there is no parallel between the enforcement of price-control laws passed by Parliament, which necessarily carry with them an appeal to the courts, and the enforcement of a contract by one party to it. The manufacturer who practises resale price maintenance agrees to let the retailer handle his goods on condition that he resells them at the price set by the manufacturer. Both parties are entirely free to enter into the agreement or not as they please. The manufacturer does not enjoy any public franchise, as does a common carrier for instance, which carries with it the duty to supply his goods to anyone who wishes to take them. Similarly, the retailer is not tied down in any way to the particular goods in question; it is not a question of the manufacturer concerned having a monopoly. What he has got is an article in the resale price of which he is vitally interested because it bears his name, and the manner in which the article is sold can seriously affect his reputation and the actual volume of sales. He wants to guard against two things: first, if a retailer offers the article for sale at a reduced price it disturbs public confidence in the article at any price; second, the manufacturer will not be able to find a sufficient number of retailers to buy the article if they have no assurance of being able to resell at a reasonable margin of profit.

In these circumstances, it is difficult to see why the manufacturer should not have the right to make it a condition of any dealer's handling his goods that he resell at the price set by him. This is not to claim the right to "establish a private system of law"; it is simply to assert the principle of freedom of contract. To revert to the British White Paper parallel between a breach of price-control laws where there is an appeal to a higher court and the enforcement of a resale price maintenance agreement where there is no such appeal, it would be interesting to know on what principles the courts or Parliament would pass judgment on a resale price maintenance agreement. If the terms laid down by the manufacturer and accepted by the retailer are to be rejected,



does it mean that the retailer is to be entitled to buy on the terms which he considers fair regardless of his motives or his competence? Or is it to be something between the two, and if so, how and by whom is it to be determined? It is submitted that there is no way of doing it short of the State itself undertaking the task which would indeed be a *reductio ad absurdum*—state regulation in the interests of freer competition.

It is submitted further that the application of the word "law" to resale price maintenance is obviously incorrect because resale price maintenance lacks the two essentials of "law" viz. establishment by public authority and application to everyone. Even if it could be claimed that resale price maintenance was an attempt to usurp the functions of public authority, it would have to be admitted that no one becomes subject to this "law" unless he voluntarily contracts to do so. What "law" is there that a person needs to specifically agree to before he becomes subject to it?

Private "law" in the same sense could be applied to thousands of situations, e.g., the hour at which a storekeeper instructs his staff to report for work, what salaries he pays, whether pay days shall be weekly, bi-weekly, half-monthly or monthly, whether he will sell his goods only for cash or, if on credit, when his accounts are to be paid, the conditions under which he will make refunds, etc., etc. The point about all these "laws" is that no one becomes subject to them unless he voluntarily contracts to do so.

This important point applies to resale price maintenance viz., that no one is required to buy the goods. If a dealer does not like the resale price maintenance terms of one manufacturer, there are always other manufacturers who would welcome his business. The dealer may equally dislike the price he is to pay, the payment terms, etc., of one manufacturer and he has the same alternative.

The fact is, it is submitted, that rather than the use of resale price maintenance constituting a usurpation by the individual manufacturer of the right to enact law, the proposed prohibition of resale price maintenance constitutes an absolutely unwarranted denial of the long-recognized common-law right of the individual to sell his goods to whomever he pleases.

It remains to add that there is reason to believe the MacQuarrie Committee did not really mean that "resale price maintenance establishes a private system of law". The Committee must have been aware that resale price maintenance necessarily involves a contract between two parties, and what the Committee objected to was that in some cases at least, the enforcement of the contract appeared unduly harsh. As to this, it is to be pointed out that the retailer has the remedy in his own hands,—i.e. he is under no compulsion to enter into the contract, and if he does not like one manufacturer's terms, he can always deal with another.

#### *Extent of Resale Price Maintenance*

The MacQuarrie Committee refer several times to resale price maintenance as being "extensively applied" and "of significant and growing proportions" in Canada. The only evidence cited was "estimates from private sources", of "12 to 15 percent of department store sales" which the Report added were "obviously not based on accurate or comparable definitions". No evidence was adduced that the practice was growing. Resale price maintenance is only applicable or in any way desirable in respect of branded products of absolute uniformity. As most manufacturers and retailers of such goods are in favour of resale price maintenance, it is fair to assume it is already in effect to whatever extent is practicable, wherever it is considered applicable. Consequently, it is submitted, with great respect to the MacQuarrie Committee, no extension of the practice is at all likely except for suitable new products that come on the market.



*Resale Price Maintenance Does Not Create Undesirable  
Rigidity in Prices*

The MacQuarrie Committee observes that "it should not be forgotten that to the extent that resale price maintenance brings more rigid and higher prices it contributes to the instability of production and the reduction of sales". It appears that the Committee had in mind, particularly, times of overproduction or unemployment. The fact is, it is submitted, that few, if any, manufacturers ever dramatize themselves as King Canutes out to hold back economic tides. When sales slump the manufacturer either reduces prices or otherwise makes it possible for the retailers to adapt themselves to the changed business conditions. Thus, if a retailer found himself in difficulties and had to liquidate stock, the manufacturer who practised resale price maintenance would seldom, if ever, interfere with the retailer holding a bargain sale. In the overwhelming majority of cases, the manufacturers would carry on with the retailer if he thought his difficulties were only temporary; he would only look for another retailer to handle his product if he thought the first retailer was going to be in continuous trouble.

*Resale Price Maintenance Is the Best if Not the Only Method of Curbing  
the Use of the "Loss-Leader" Device*

The MacQuarrie Committee states that it believes the "loss-leader" device is a monopolistic practice which does not promote general welfare and is not compatible with the public interest". The Committee goes on to say that it is "convinced that there can be found other effective and more desirable methods of controlling the "loss-leader" than minimum resale price maintenance". Again, the Committee states that "resale price maintenance no doubt helps to protect the reputation of branded goods and facilitates advertising and sales promotion", but goes on to say it "is not convinced by the argument that the reputation of branded goods greatly suffers from normal price variations and that people will think quality has deteriorated if prices are allowed to vary". "If the "loss-leader" is taken care of", the Committee concludes, "normal price reductions will not cause serious problems to the manufacturer".

From this, it is clear that the Committee realizes the necessity of taking care of the use of the "loss-leader" device, if resale price maintenance is to be prohibited. The Committee recommends, however, that resale price maintenance should be prohibited without waiting for the discovery of some new method of taking care of the "loss-leader" device, because it does not believe that the "loss-leader" device presents any immediate danger, as "extreme forms of price cutting are not very likely in this period of inflation and relative scarcity".

As to this, it is submitted that during recent weeks, not a few price-maintained articles, including motor cars and television sets, have been sold below cost. In these circumstances it is submitted, with great respect to the MacQuarrie Committee, that it would be most unsound to proceed to prohibit resale price maintenance without providing any substitute method for the control of a device which the Committee itself finds "is not compatible with the public interest". In the view of the Canadian Manufacturers' Association, there is no method of controlling the use of the "loss-leader" device that compares in effectiveness and fairness with resale price maintenance.

*Resale Price Maintenance and Inflation*

In conclusion, it is submitted that there is a strong case for refraining from dealing finally with one of the questions referred to the MacQuarrie Committee until the Committee's full report is available recommending "what amendments, if any, should be made to our Canadian legislation in order to make it a more

effective instrument for the encouraging and safeguarding of our free economy". It is understood that one of the principal reasons for not waiting for the full report but proceeding at once to legislate with respect to resale price maintenance is that the abolition of resale price maintenance will have an appreciable effect on the cost of living. As to this, the Prime Minister in the House of Commons on October 15th, doubted whether the effect on the cost of living would be "very substantial". In view of the small percentage of goods which are affected by resale price maintenance, it is submitted that the Prime Minister's doubt was well-founded. It is not too much to say that the disturbance and dislocation caused to business by the abolition of resale price maintenance will be out of all proportion to any effect such abolition will have on prices, and indeed it is arguable that the disturbance and dislocation involved may have the effect not of reducing but raising prices.

Respectfully submitted,

CANADIAN MANUFACTURERS' ASSOCIATION,

R. B. TAYLOR,

*Chairman, Legislation Committee.*

Ottawa, November 23rd, 1951.

## APPENDIX B

Presentation by the  
CANADIAN FEDERATION OF AGRICULTURE  
to the  
Joint Committee  
of the  
SENATE AND HOUSE OF COMMONS  
on  
COMBINES LEGISLATION

Ottawa, November 23, 1951

Hon. Senators and Members:—

The Canadian Federation of Agriculture welcomes this opportunity of presenting the views of organized agriculture to the joint House Committee on the proposed amendment to the Combines Investigation Act to outlaw the restrictive trade practice known as, "resale price maintenance".

Our views on this matter are likely already known to this Committee. In our brief presented to the Special Committee to Study Combines Legislation, known as the MacQuarrie Committee, in August of 1950, we recommended that: "The Combines Investigation Act should be amended to provide that resale price maintenance shall be an illegal practice when resorted to by a single individual or corporation". The reasons we advanced in that brief for our opposition to resale price maintenance were of necessity not presented very fully. In this statement we shall elaborate and further extend our reasons for supporting the proposed legislation.

### *Importance of the Legislation*

Firstly may we emphasize our concern in this matter. We consider that the proposed bill outlawing the practice of resale price maintenance is one of the most important pieces of legislation ever to come before Parliament.

The Government of Canada for many years has recognized that modern industry has produced a set of conditions which are radically different from, let us say, a hundred years ago, when economic activity was based largely on relatively small industrial units in active competition with one another. The steady growth of large scale business concerns has tended to create concentrations of economic power which fosters the growth of monopolistic competition or imperfect competition rather than the simple competition of classical economic theory.

The only justification for the existence of any business, large or small, is for the purpose of producing goods and service for consumers. Profits in business are an end in themselves for the firms concerned, but for society as a whole profits are only a means to an end. For society profits are only useful as an incentive and as a regulator of production. In other words, if profits are based on free competition in a reasonably flexible price economy then our resources will be used to the best advantage for the nation as a whole.

If profits, however, are based on monopoly or even conditions of semi-monopoly then it cannot be said that the resources of the nation are being used to the best advantage of all the people. It is a recognition of this fact that brought about the original Combines Investigation Act and its successive amendments.

Time has proved the difficulties in the way of curbing or destroying combines in restraint of trade in spite of the present legislation. Today combines in restraint of trade, and innocent appearing associations of many business groups exist for and actively do participate in actions which result in the stifling of competition.

We are definitely of the opinion that the fact that such combines can exist in spite of the existing legislation is because individual resale price maintenance, and the practices which are used to enforce this system, have not been prohibited by law.

The proposed legislation, we are convinced, therefore, is one of the most important steps to be taken by Parliament to break up the power of combines in restraint of trade. The passing of this amendment would greatly increase the power of the Combines Investigation Act to break the power of combines and restore a measure of healthy competition where it is lacking and bring more flexibility to the price system.

#### *Resale Price Maintenance is Private Price Fixing*

Parliament may have wondered why the general public does not appear to be greatly aroused yet about the present dispute with respect to resale price maintenance. The main reason for this is that the general public does not know what the expression "resale price maintenance" means. If this technical or academic expression were dropped and "private price fixing", substituted the public would soon realize just what is involved in this restrictive trade practice. If the public were fully informed of the fact that resale price maintenance means the private fixing of minimum prices for certain goods and the enforcement of these prices by a private system of law and punishment, allowing no appeal to established courts of justice, then they would be aroused and surely demand that such practices be banned.

#### *Price Floors for Farm Products and Resale Price Maintenance*

Those who advocate the practice of private resale price fixing have cited the example of Federal Government policy of price floors for farm products and Provincial Government policy of milk boards which establish the price



of fluid milk in city markets. They ask the question, "if the government protects the farmers by price fixing why will it not allow the small merchants to protect themselves by private price fixing?"

This kind of propaganda is simply drawing a red herring across the trail of private resale price fixing. Government price floors for farm products and private resale price fixing are as far apart as the poles.

Price floors for farm products are established by the government, according to the law of the land, and only after very careful consideration of all the facts. The government always takes into careful consideration the position of the producers and the effect on consumers of any price floor decision.

Retail prices for fluid milk in cities are fixed by legally established Provincial Milk Control Boards, which function strictly according to Provincial law. Milk prices are only established after a public hearing in which the Board hears evidence from producers, distributors and consumers.

In this connection we note the following quotation from the brief submitted to this Committee by the Pharmaceutical Association:

The popular notion is that resale price maintenance is 'price-fixing'. Such is not the case. The prices established by the Milk Control Board of Ontario is an illustration of price fixing. The Board fixes the price of all milk regardless of the producer or the distributor. No distributor can deviate from the established price without the penalty of the law.

This quotation is both incorrect and misleading. The Ontario Milk Board does not fix prices of all milk regardless of producer and distributor. Producers and distributors in city milk areas negotiate under public legislation for a producer price, and in case of disagreement, the board is the arbitrator. The board also establishes the maximum retail price, generally after public hearings, such as was recently held in Ottawa.

On the other hand minimum resale prices for certain goods are fixed by private business firms, not according to any law of the land, but according to private "law" and agreement and enforcement by fear of boycott and a variety of penalties. The public has no recourse to this process, though the public is the group most vitally concerned.

When price floors for farm products have been established by the Federal Government they have never been set at a level calculated to return interest on the average farmers' investment, let alone profit. This applies to floor price for wheat, oats, barley, potatoes, honey, apples, cheese, butter and bacon hogs.

*Private resale fixed prices* are never set at the "no profit" level. They are always set at a level which protects the profit of even the inefficient operator. If private resale prices were fixed at levels comparable to floor prices for farm products the competition would require a great many retailers to improve the efficiency of their operations.

It is abundantly clear that the practice of private resale price fixing is in no way comparable to the policy of floor price protection for farmers through price floor legislation. Nor is it comparable to the fixing of milk prices by a government appointed Milk Control Board, with public hearings.

The farmers of Canada have never obtained any protection which was not established within the law of the land and considered to be in the public interest. The advocates of private resale price fixing may be able to prove that this restrictive trade practice benefits an individual firm but it does not logically follow what is good for one firm must of necessity be good for all firms together, and even if it could be proved that the practice benefits a group of firms, this does not prove that the practice is in the public interest.

*Why The Canadian Federation of Agriculture is Opposed to Private Resale Price Fixing*

Farmers are directly affected by private resale price fixing probably more than any other group in society. As purchasers of consumption goods they are affected by private resale price fixing at the consumer level. As producers they have to purchase all their tools, supplies and instruments of production also at the retail level. Thus they are more likely to feel the harmful effects of this restrictive trade practice than any other group.

We are opposed to the practice of private resale price fixing because:

1. It restricts or eliminates competition at the wholesale and particularly the retail level of a wide range of goods; i.e., increased cost to the ultimate consumer.
2. It operates within the private "laws" with no appeal to established courts of justice, and is all too often enforced by threats and fear of denial of supplies.
3. It results in excessive, unnecessary and wasteful advertising and fancy services.
4. Its logical consequence is the extension of vertical private price fixing into the broader field of horizontal private price fixing; in other words it fosters combines.
5. Supported by imperfect competition or semi-monopolistic competition of manufacturers it is one of the more important causes of inflexible prices of many manufactured goods which hinder automatic adjustments in the economic system.

### 1 *Restriction of Competition*

We have pointed out that profit may be an end in itself for an individual firm or a group of firms but for society as a whole it is just a means to an end. So in the same manner competition is not an end in itself but only a means to an end—the end being the ultimate protection of the purchaser of goods against exploitation by the supplier.

Without some profits the private enterprise system ultimately collapses. Without competition the private enterprise system ultimately develops into a system of special privilege. Private resale price fixing very definitely reduces or eliminates competition at the distributive level and therefore is a form of special privilege.

Why so many retailers support the practice of private resale price fixing? They support it first because they consider they can make larger profits under such a system than under a free competitive price system. Secondly, many of them support it because under such a system of private price fixing they can avoid the trials and tribulations of free and rigorous competition. Thirdly, many of them support it because they believe that private resale price fixing must of necessity be part and parcel of a system of high quality branded goods and national advertising from which they as individuals receive much of the benefits but pay none of its costs.

If retailers did not consider that private resale price fixing increased their margins of profit they surely would not support this practice so vehemently. There is plenty of evidence that such is the case. An editorial in the November 1, 1951, issue of the *Canadian Pharmaceutical Journal*, entitled, "We Will Fight with Everything we Have", states:

Not at any time during the last twenty-five years has the drug industry been so fighting mad, so disgusted with the inane political manoeuvring which has taken place in Ottawa since the announcement



was made that legislation to prohibit price maintenance was to be introduced. . . . Thanks to the government's intention to make the retailers of Canada the goats in its political squirming, we may be hurt and hurt badly. <sup>(1)</sup>

The editorial ends with the sentence, "a principle of democracy is at stake and we must not let the government ignore it or trample on us". We fail to see where any democratic principle lies in the system under which manufacturers and organized distributors, behind closed doors, and without access by the public in any way, decide what the retailers shall charge the public for their goods, and enforce those prices by coercion, and threat of loss of supply.

It seems to us inescapable that articles sold under private resale fixed prices would sell over a period of time at higher average levels than they would without price fixing.

The Royal Commission on the Cost of Living in Newfoundland in 1950 studied the effects of private resale price fixing in that Province. Their general conclusions with respect to this practice were as follows:

Resale price maintenance since Confederation has had a marked effect. It has brought many prices in line with national prices. At the same time, it has tended to place prices of drugs, some women's and other clothing, and many hardware and electrical goods above the levels they might have reached if no resale prices had been suggested after Confederation. In some cases, such as automotive supplies, it has lowered prices slightly below such levels. The effect on prices of batteries and paint brushes is especially serious; the comments and recommendations made above need not be repeated here.<sup>2</sup>

Under so-called Fair Trade Laws in the United States private resale price fixing has become a legal practice in forty-five states since the middle 1930's. Only in Vermont, Texas, Missouri and Washington, D.C., is this restrictive trade practice illegal?

The magazine, *Fortune*, in the January 1949 issue, had a leading article entitled "The Not-So-Fair-Trade-Laws". The writer of the article made a number of comparisons between prices of drug store articles in States where private resale price fixing was legal and in states where it was not legal. This is what the writer had to say about the comparison:—

Perhaps Washington's exemption from fair-trade price regulation is explained by the benevolent interest that Congress has always taken in the cost of living in the capital. Be that as it may, Congressmen and lesser residents of the District of Columbia can lather up with a big tube of Barbamol bought for 29 cents; in fair-trade Maryland, the same tube would cost 39 cents. The Congressmen can regenerate the blood cells with Lilly's Lextron Pulvules (84's) for \$2.29, instead of the fair-trade price of \$3.15. A bottle of Old Grand-dad is \$5.45 in Washington, \$6.65 (before state tax) across the line. BC headache powders are a dime instead of 19 cents.

A recent study of 117 branded drug items showed that thirty-five cost about a third less in Washington than in Maryland; thirty-eight about a quarter less; and twenty-nine about a seventh less. A comparison of free-trade Missouri and fair-trade Illinois turns up much the same story. The St. Louis *Star-Times* figures out that fifty-four fair-trade drug items cost an average of 16.2 per cent more on the east bank of the Mississippi than on the St. Louis side.<sup>3</sup>

<sup>1</sup> Canadian Pharmaceutical Journal, November, 1951.

<sup>2</sup> Report of the Royal Commission on the Cost of Living in Newfoundland—1950, Chapter 10, Page 79.

<sup>3</sup> *Fortune*, January 1949.



While this is an example of the effect of private price-fixing in the United States, there is every reason to believe that a similar situation would be noticeable in Canada if we had, let us say, legalised private resale price fixing in Ontario but a free retail market in Quebec.

Many retailers themselves know that if this practice were outlawed, prices for branded goods would be reduced. They have not hesitated to express these views to some people. In the October 26 issue of *The Canadian Textile Journal* appears an article entitled, "Re-Sale Price Maintenance and Inflation". The writer of the article reports on a survey of many retailers, including a number of departmental stores. While he met those who were in favour of private resale price fixing, as we expect, yet he found many who were not. We quote from the article as follows:—

A survey of many retailers, including a number of department stores, shows that many of them feel that a ban on price fixing at the retail level has been long needed and they are happy that the force of supply and demand will again be operative after the legislation is passed. Many retailers expect price reductions on many lines including a number of textile products, such as hats, gloves, hosiery, etc.

One prominent retailer states that "reductions can be expected in many lines of price-controlled merchandise" following passage of the legislation. Retailers, however, state that they have no intention of price cutting to the point where it would cause a price war and they maintained further that a drop in price, particularly by small retailers, represents a necessary move to reduce inventories during this period of restricted credit and slow business. With higher down payments on installment buying and credit restrictions many retailers are finding it increasingly difficult to carry large stocks.

There are ample stocks of merchandise on the shelves at present and it is felt that price drops are indicated. A considerable number of retailers pointed out that profit margins on certain lines of price controlled goods are extremely high and retailers are in a position to accept a smaller profit margin than some manufacturers allow.

#### *Small Retailers*

Banning controlled prices would not be apt to cause serious business failures, according to these same sources, who maintain that while controlled prices are in some instances beneficial to the small retailer, by making it impossible for him to be undersold, many of the large retail outlets have long felt that the economy as a whole would benefit by an end to price fixing.

One retailer pointed out that in a democratic country a business-man like himself should be able to sell goods at a price he considers fair and should not be forced to adhere to set prices. The legislation, he contended, would definitely increase competition and reduce retail prices. In some cases price wars, like the recent one in Hamilton, could be expected. But in the long run, he said, the law of supply and demand would have a stabilizing effect on the price structure generally and give the consumer better value for his purchasing dollar".

More than half of all the purchases made by farmers for productive purposes come directly under some form of private resale price fixing. This list would include the following tools and supplies:

- Farm machinery and parts
- Most items of general hardware such as small tools
- Many construction and building materials
- Fertilizer

Truck and auto tires  
 Gasoline and oil  
 Milking machines and parts  
 Milk coolers  
 Electric motors  
 All barn fixtures such as steel stanchions, water bowls, etc.  
 Some brands of paint  
 Woven wire, wire gates and barbed wire  
 Veterinary supplies and drugs for livestock.

In some of the above cases the entire sales come under private resale price fixing. In other cases a portion of the sales come under private resale price fixing.

In addition to the above list of production goods the farmer has to buy many articles for personal consumption which are sold under private resale price fixing laws. Detailed research, we are sure, would indicate that about half of the total expenditures of the farmer are for goods coming under the protective umbrella of this restrictive trade practice.

With rare exceptions the farmer has to face the open competitive market from day to day when making his sales. But he has practically no opportunity of bargaining in a free market for his purchases. Is it any wonder that he frequently grumbles? He feels that the dice are loaded against him, as indeed they are when you compare his bargaining position with the great measure of security provided for the dealers who sell at privately determined fixed prices.

We are convinced that private resale price fixing establishes fixed margins between the consumer and the manufacturer at higher average levels than they would be under a free system whereby margins would be determined by open competition. This must necessarily be so because privately fixed margins are set high enough to maintain a wide retail outlet with scant consideration of efficiency of operation.

#### *11 Private Resale Price Fixing Operates Within Private Laws and is Enforced by Threats and Fear of Denial of Supplies*

Whenever any individual or body has made a detailed study of the operations of monopolies, combines or private resale price fixing they have established the fact that price structures are maintained and enforced by a wide variety of private "laws". Very often the private policing of these restrictive trade practices is carried out by trade associations.

The Report of the Royal Commission on Price Spreads (1935) has numerous examples of private policing of private price fixing. One example is their discussion on the policy of the Imperial Tobacco Company with respect to pricing policies:

"The Imperial Tobacco Company in attempting to put into effect a system of resale price maintenance is adopting a policy which in principle meets with the general approval of the trade, and in the operation of which they have received co-operation from other manufacturers, jobbers and retailers. Their method of enforcement is simple. The Imperial Tobacco Company merely removes from its lists dealers and jobbers who cut prices, either of their own or competitors' products, with the jobbers' associations assisting by bringing the names of offenders to the notice of the company. "Cutting off the list" in this case is no mere gesture. When a company which produces nearly three-quarters of the supply refuses to sell a wholesaler or retailer, the effect on that dealer is too obvious to need comment". (1)

(1) Report of the Royal Commission on Price Spreads (1935) Page 53.

*Situation in Great Britain*

The practice of private resale price fixing is quite widespread in Great Britain. The recent Labour Government undertook a study of this practice and the report was presented to the British Parliament in June of this year. The sections of the report dealing with methods of enforcement of fixed resale prices are in part as follows:

"7. The salient feature of most of these arrangements is the power of the associations to organize a boycott against a trader who reduces any of the prices which they seek to enforce. If a trader reduces the price of one line of one manufacturer, his name may be placed on a "stop list" and he may thereupon be unable to obtain supplies of a wide range of goods made by other manufacturers, even though he may have scrupulously observed their resale prices. It will be evident that where the goods covered by the association's activities form a large part of a trade, this type of boycott is equivalent to putting the victim of it out of business".

9. If a trader fails to observe any of these rules and regulations by which the associations seek to close any loophole in the operation of resale price maintenance, he may suffer penalties ranging in severity from fines (in some cases involving substantial sums) up to the boycott. (It is worth noting, too, that a trader who by charging too little for his goods incurs these penalties at the hands of a trade association has no recourse to any higher authority; by contrast, a trader, who charges too much and is proceeded against by the State under price-control laws, can always appeal to a higher court.) These penal proceedings, which may have the effect of driving a shopkeeper out of his trade and which are directed not to the maintenance of a recognized standard or code of behaviour, generally accepted as necessary in the public interest, but solely to the enforcement of a particular trade policy of questionable merit, take place behind closed doors and without any supervision by the courts of Parliament.<sup>(1)</sup>

We are quite convinced that the same type of practices quoted above are widely prevalent in Canada, unknown to the great majority of Canadian consumers. To throw a person out of business unless he toes the line of private coercive law is the very negation of modern democracy. In these days we are prone to brag about the freedom of the individual in our modern democracy in contrast to the position of the individual in totalitarian countries. We are continually being told that our freedom is based on the Rule of Law and yet we have allowed a restrictive trade practice to develop and flourish to the point where men can be forced out of legitimate business because they do not conform to a private law whose rules are unknown to the public and in fact whose secret agreements are withheld from the public. If private signed agreements could stand the full glare of public approval, infringements would be taken to the Courts of Justice for decision. But the fact that this is not done can surely be taken as proof that one or both parties to the agreement know full well that policies which arise from these restrictive agreements are not in the public interest. Again may we repeat that a practice which may be in the interests of a single individual or even quite a group of individuals is not necessarily in the public interest.

<sup>(1)</sup> A Statement on Resale Price Maintenance. Presented by the President of the Board of Trade to Parliament by Command of His Majesty, June 1951, Page 4.



### III. *Private Resale Price Fixing Results in Excessive, Unnecessary and Wasteful Advertising and Fancy Services*

It is generally admitted that there is a considerable variation between stores or dealers in the costs of merchandising articles at the retail level. Some stores because of volume, location, types of merchandise carried and managerial ability have distinctly lower costs than those with a more unfavourable combination of factors. But once, let us say, a manufacturer of washing machines has lined up all his distributors or retailers in a private price fixing understanding then this brand of machine will sell for the same price in all the stores of a certain city perhaps at the same price between cities as well.

In Ottawa for instance, there are some eleven different makes of washing machines sold, handled by about 40 retailers. Some of these stores handle as many as three and four different makes.

In instances, such as this, less efficient stores sell the same make or article at the same fixed price as the most efficient store. The greater margin of profit accruing to the most efficient store cannot be passed on to the consumer in the form of lowered prices. Consequently we often see the excess return being expended for expensive advertising features, displays, additional salesmen, and so forth.

In a recent survey we found that five separate firms in Ottawa, handling a particular make of washing machine, quoted the same price in each case, namely, \$299.50. When asked if it were possible to get one of these machines at a lower price, one store stated firmly, "no, these prices are all fixed".

With competition between dealers eliminated on a price basis the competition then becomes competition on a brand basis. This type of competition expresses itself in excessive advertising in daily, weekly and monthly journals and in excessive radio and bill board advertising, every penny of which in the long run must be paid by the ultimate consumer. We are not condemning normal advertising necessary in any private enterprise economy. We do feel, however, that the steady growth of the practice of private agreements to fix retail prices and eliminate the most important protection the consumer has, price competition, is leading to a steady growth in excessive advertising costs which is a social waste and not in the public interest.

### IV. *The Logical Consequence of Private Resale Price Fixing Between a Manufacturer and a Dealer is the Extension of Price Fixing Between Manufacturers and Between Dealers*

This argument we consider one of the strongest against the present widespread practice of private resale price fixing. It begs the question to say that the Government already has laws to prosecute and break up combines. May we again repeat that in spite of the best efforts of the Combines Investigation Branch, and in spite of repeated amendments to strengthen the Act, it is the opinion of the organized farmers that combines whether by formal or tacit agreement still flourish in Canada.

We look upon private resale price fixing as the front line only of many large scale combines existing in secret behind the lines. Moreover the fact that groups of retailers acting as individuals make private price fixing agreements with a single manufacturer creates a combine in fact but not according to law. When all the retailers of a particular make of washing machine in the City of Ottawa undertake to market this machine under a price fixing agreement which in fact they do, they have in effect formed a combine against the consumers of Ottawa. Further, when we realize that one single retailer handles four different makes of washing machines, all of which are under private price fixing with four different manufacturers, and that most

if not all, makes of washing machines are under the same tight price fixing agreements in all stores, the combine at the retail level in the City of Ottawa is complete and all-embracing.

If these same retailers all got together and through an association agreed to set a schedule of prices, and if proof could be provided of this action, then they could be prosecuted as a combine under the present act. But they do not do this. Each one makes an individual agreement with the manufacturer which in fact creates the combine as we have mentioned.

If it is illegal for combines to exist which restrict production and control prices at the manufacturing level then why is it not reasonable to declare illegal a practice which fixes prices and eliminates or severely restricts competition at the retail level? It is not a sound argument to say that most private resale fixed prices are fair prices to the consumer. This is because under our private enterprise economy we rely upon open competition and the free market to determine what is a fair price in relation to the demand and supply conditions at the time. Who knows what is a fair price for the consumer to pay? Shall the consumer say what it will be—the one most concerned—or shall it be the manufacturer and the retailer working together, who together can decide how much shall be made and fed out to the consumer in order to induce him to pay their ideas of the “fair price”?

In summarizing this section of our brief we are of the opinion that uniform fixed retail prices dictated by manufacturers makes it substantially easier for manufacturers to connive together to control production and prices for the purpose of restricting competition and maximizing profits which is not in the public interest.

*V. Private Resale Price Fixing is Accompanied by Imperfect Competition at the Manufacturing Level. The two, Operating in Unison, are Largely Responsible for the Increasing Inflexibility of the Price Structure*

Our modern economy differs a great deal from that of a hundred years ago. The steady growth of invention and modern technology has resulted in our present type of industrial organization. This modern organization of large scale concentrated units is in sharp contrast to the multitude of independent industrial units of a century ago.

Along with the growth of large scale industrial units has come the power of a few large administrative units operating in one particular field of production to change the nature of competition from unrestricted to limited or restricted competition. It has changed the character of price determination for many products by making it a matter to be determined in the offices of a corporation and held rigid over a period of time, instead of being determined by bargaining in the market. Thus modern industrial organization has largely changed our industrial price structure from free prices to privately administered prices. This is one of the major differences between our modern economy and that of a century ago. Since a private enterprise economy is essentially a market price economy, in our opinion, the problem of inflexible privately administered prices lies at the crux of the problem of how to make our modern economy function.

The front line of privately administered prices for many consumption and production goods is the price at the retail or ultimate consumer level. As long as that line is held the decisions made at the manufacturing level can be maintained. Once having established a system of private fixed prices at the retail level, which traditionally are changed infrequently, so called competing manufacturers know that their own price structure is reasonably safe. Then it is a matter of administrative decision at the top level as to how much to



produce. If demand falls off, and inventories increase, their decision is to maintain the fixed price and reduce production. The lower the demand the less they produce. The laying off of workers reduces still further demand for all industrial products and production is further reduced. All the time through the practice of private resale price fixing the retail price for the product is not lowered, or if at all, very little. The retailer is prohibited from lowering his prices to fit the lowered demand. If he does he is called a "chiseler" and committing an "unfair trade practice". It is considered a business sin and in the opinion of many business men against the public interest and even against the consumers' interest.

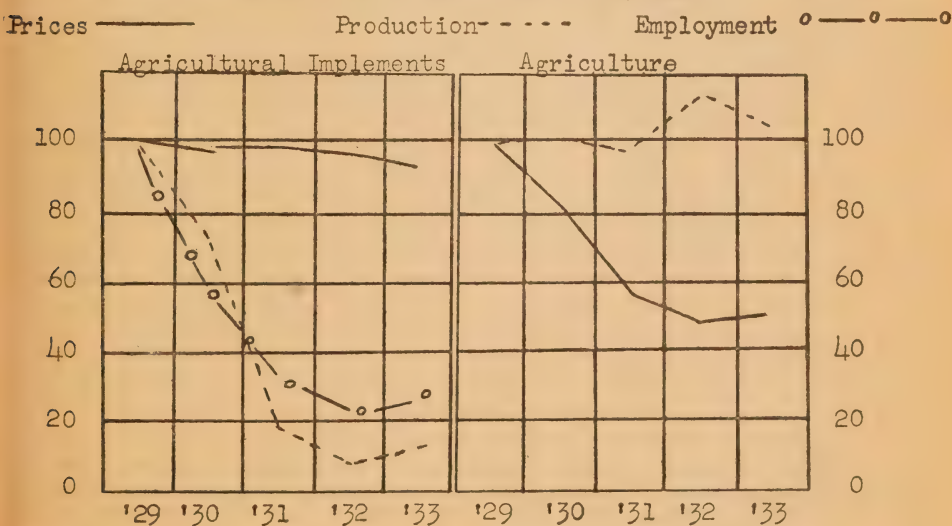
If retailers were allowed freedom to price their products according to their own judgement competition at the retail level between retailers of the same brand and between retailers of different brands would result in falling prices at the retail level, some fall in prices at the manufacturing level, possibly lower profits but more consumption, production and less unemployment.

The production and sale of farm machinery is a typical example of the policy of an industry dominated by a few large producers and using privately administered price fixing as a means to maintain prices at the expense of production and employment in their own industry. This policy is in sharp contrast to the farming industry which, because of its nature, maintains total production at relatively stable levels and feels the full impact of changing demand for its products.

In a period of falling demand, as in the 1930's, farmers, although fully employed, receive very low incomes, because their highly flexible prices fall to low levels, and they cannot buy many of the products of industry which are maintained at relatively inflexible fixed prices. The small number of industrial workers employed under conditions of low industrial production may receive a satisfactory income but when considered against the background of mass unemployment the industrial workers as a whole do not fare any better than the farmer.

The following chart taken from the Report of the Royal Commission on Price Spreads shows this situation very clearly for agriculture and the farm machinery industry.

PRICES, PRODUCTION AND EMPLOYMENT\* FOR THE AGRICULTURAL IMPLEMENTS INDUSTRY AND FOR AGRICULTURE, 1929=100



\* Employment data in the Agricultural Implements Industry were . . . 17 taken from official sources and added to the above chart appearing in the 1935 Price Spreads Report.



The prices for farm machinery from 1929 to 1933 fell only 7 per cent but production and employment in the industry fell 90 per cent and 73 per cent respectively. During the same period total farm production was stable but prices for farm products fell 50 per cent

Another example of the evil effects of inflexible price is the cement industry. Even although this happens to be an example of a monopoly or near monopoly, it illustrates very vividly the effects of maintaining a rigid price structure at a time of falling demand. Whether there is a complete monopoly, a combine, partial combine or even unrestricted competition at the manufacturers level any practice which results in private resale fixed prices at the retail level brings about rigidity in the price structure and transfers the adjustment in prices to adjustment in production and employment. At a time of falling demand the result is complete disruption of the economy.

#### Wholesale Prices and Production of Cement in Canada (x)

			Wholesale Price Index of Cement Bbls.
Cement Production		Index	Index
1929 .....	12,284,000	100 .....	100
1930 .....	11,032,000	90 .....	100
1931 .....	10,162,000	83 .....	102
1932 .....	4,499,000	37 .....	105
1933 .....	3,007,000	24 .....	106
1934 .....	3,783,000	31 .....	106
1935 .....	3,648,000	30 .....	106

(x) Dominion Bureau of Statistics data.

Cement manufacturers increased the wholesale prices of cement six per cent from 1929 to 1933 but reduced production 76 per cent. While we have no available retail prices for cement during this period there is every reason to believe that they would coincide closely with the movement of wholesale prices.

It seems unnecessary to burden the committee with further proof that at a time of falling demand the farmer and the urban consumer are faced with a rigid price structure at the retail level that refuses to budge. What keeps it at such levels when demand falls off? The answer is very plain; a whole series of restrictions on the retailer who is not allowed to lower prices, or who is afraid to lower prices for fear of being called a "price-cutter", or "chiseler".

For the average article of household equipment purchased by the farmer that would cost him \$1.04 in 1929, he paid \$1.03 in 1930, 99c in 1931, 98c in 1932 and 95c at the lowest level of retail prices in 1933.(1) It took four years of deepening depression and widespread unemployment before he got a 10 per cent cut in his retail prices of household equipment. The same story can be told for urban consumers. Combines, tacit or actual, using private resale price fixing as the cutting edge of the machine were able to hold the price line, cut production and let out of work hundreds of thousands of workers. If the practice of private resale price fixing had been outlawed long ago there is no doubt in our minds that with more flexible prices there would have been more production and less unemployment in the 1930's.

We believe that if private resale price fixing were outlawed, keen price competition at the retail level would result in more competition at the manufacturer's level and thereby reduce the advantages of manufacturers conspiring to restrict production.

(1)—DBS Index of Cost of Living for Farmers' Household Equipment 1935-39=100; 1929=104.4; 1930=103.5; 1931=99.1; 1932=98.3; 1933=94.8.

The committee may ponder why we have stressed the situation of the 1930's so much. We have done this to point out that in periods of low demand, inflexible prices disrupt the entire economy. Nobody can successfully deny that private resale price fixing is one of the most important factors causing this rigidity. Practically every statement made or to be made in support of this restrictive practice has mentioned or will mention the great blessings of stability for the merchant and manufacturer achieved by this device. To discuss the important subject of private resale price fixing in the light of the present only is to blind ourselves to the more fundamental one of its long run evil effects on the entire economy.

*Reasons Advanced in Favour of Private Resale  
Price Fixing*

An examination of the statements of those who favour this practice and our rebuttals are as follows:

It is claimed that:

There is nothing in the practice of private resale price fixing by one manufacturer to prevent other manufacturers from producing similar articles and pricing them as they wish. In other words healthy competition is maintained at the manufacturer's level.

Let us take the example say of the manufacturers of washing machines A, B and C, all of whom practice private resale price fixing. In many cases the same retailer will sell all three makes. Because one retailer handles all three makes the mark up margins allowed by the three manufacturers on their respective machines will be substantially the same. If this were not so the retailer would push the sale of one make more than another.

Each manufacturer now knows that he is freed from the risk that the retailer will cut the price on the product of one of his rivals and thus increase sales of the rival machine resulting in a reduction in sales of his own. This being the case each manufacturer is freed from the necessity of having to lower his price to the retailer in order to stimulate his own sales. Competition at the manufacturer's level is soon reduced.

If retailers were free to vary their prices to move the different grades or styling of each make of machine according to the demand for and supply of machines there would always be the possibility of any manufacturer lowering his price to the retailer in order to maintain the dealer's margin and to compete with his rival. In other words eliminating price competition at the retail level very definitely tends to restrict or reduce price competition at the manufacturer's level.

It may be true a manufacturer is free to produce similar goods but once having done so and established prices for his own product he knows that henceforth the competitive price factor at his level is very definitely reduced because his rivals are working under fixed retail prices and stable margins.

II. It is claimed that:

Private resale price fixing prevents economic concentration of large scale retailers and helps to maintain the small independent retailer in business.

This is the stock argument which is used so much. The argument certainly implies that the small independent retailer has higher costs and is a more inefficient distributor otherwise he could stand the competition at the retail price level. If he says he cannot then what more proof do we need that private resale price fixing results in higher margins and higher retail

prices than what would obtain under conditions of price competition at the retail level? This argument to a certain extent therefore acts as a boomerang. If as some claim private resale price maintenance does not result in higher retail prices or higher margins then the little independent fellow is not hurt if the practice is outlawed. If on the other hand he would be hurt and "hurt badly", by the outlawing of this practice then private resale price maintenance does raise margins and prices.

The fact of the matter is this argument is grossly exaggerated. There are thousand of independent dealers who have already special advantages over large scale stores, because of location, type of customers, and personal services—advantages which have always been enough to keep them in business. Moreover, there are thousands of independent retailers whose sales of goods coming under this practice are only a relatively small proportion of their total sales. A moderate reduction in the price of branded articles is certainly not going to drive them out of business. We admit there are likely some independent merchants on the margin. There are always some businessmen on the margin. There are thousands of farmers on the margin. Some of them go out of business when prices fall. There is always a certain amount of this going on. If as a direct result of lower margins and lower prices to the consumer a small number of independent merchants were forced out of business these would be the marginal ones.

Once having established a favourable margin by private price fixing the next logical step is for trade associations of independent dealers to try and restrict their numbers from increasing too rapidly. Too many dealers lower the profits of the dealer without any benefit to the consumer because the retail price is fixed.

In the British drug trade restriction by private agreement is well advanced as the following letter written by the secretary of the British National Pharmaceutical Union shows. This letter is quoted in the article appearing in the "Fortune" magazine article previously referred to:

In our country all proprietary medicine vendors have to be licensed and we woke up to the fact that the number of these vendors was increasing at the rate of eight to nine thousand a year. It is a fact that owing to the success of the price maintenance movement initiated. . . 38 years ago, the price of proprietary medicines are in fact maintained and the 20 to 30 per cent profit which those articles yield has proved a tremendous temptation to other shopkeepers to invade the proprietary medicine business. . . . Hence you will see that the success of our own war to prevent price cutting within our ranks has produced an army of competitors in our own business. . . .

My own organization decided that it would be reasonable to ask manufacturers of proprietary medicinal and surgical goods to restrict their channel of distribution to the chemists' trade. We ask the proprietors of these articles to sign an agreement for seven years undertaking only to sell these goods through chemists. In return we, on behalf of the chemists, undertake to give these goods—the utmost possible sales assistance. . . . On the other side, we ask all our members to refrain from giving window, counter or other displays of any kind to the goods or advertising material of any article within our specification which is not upon our list.



Some electrical appliance dealers in Canada have admitted that large margins have brought in too many dealers. This was referred to at the annual meeting of the Ontario Association of Radio and Appliance Dealers in 1948 as follows:

On the question of discounts, another man said a large part of bigger prewar discounts were actually given away by dealers in trade-in offers and other business-getting devices. He questioned that the discount loss today is as great as it may appear on the surface. On the same tack, another dealer suggested that the former big discounts had been responsible for luring "a lot of tramps" into the appliance business in the last few years. These, he said, may be sloughed off by lower discounts—"blessings in disguise".

#### *Lower Discounts on Razors*

The rejoinder to that one was: "Asking for low discounts is like asking for a lot of razors so we can cut our own throats!"

This Ontario convention passed a resolution asking for some means to be found to confine the sale of electrical appliances to legitimate appliance outlets. <sup>(1)</sup>

The general public cannot always rely upon the small independent dealer, working through their trade associations, with fixed prices, to protect them against what is called the economic power of large scale retailers. The restrictive practices of combinations of independent dealers can result in practices just as monopolistic as those of large corporations.

We hear frequently the argument that private resale fixed prices are "fair" to the public and therefore that such fixed prices must be for the general good. This is pure humbug, for who is to say what of such prices are fair and what are not fair, to the public, when the prices are privately fixed, with no representative of the public in on the deal.

III. It is claimed that without private resale price fixing in small localities served by a single dealer monopoly would be present and the public would be exploited by the dealer charging high prices.

This argument may have held water 20 years ago but today it is a red herring. The truth of the matter is that with the practically universal use of private automobile, street car service and mail order stores effective competition would prevent any monopolistic exploitation of the consumer.

IV. It is claimed that private resale price fixing produces a stable price structure, preventing excessive fluctuation of prices in both directions, since the prices are usually fixed prices.

We have indicated clearly that private resale price fixing is largely responsible for the rigidly held price line when demand falls off. We have pointed out that this practice destroys balance in the price system, is largely responsible for serious unemployment at certain times and prevents automatic adjustments within the price system.

Now, concerning the argument that this practice prevents some dealers from charging exorbitant prices during periods of scarcity, we would say that during the last hundred years there have been only two periods when there was a substantial shortage of goods. One was during World War I and for two years in the immediate post-war period. The other period was during the recent war and immediate post-war period. In no other periods have serious shortages of goods developed.

<sup>1</sup> Hardware and Metal and Electrical Dealers. May 1, 1948.

During the last war the government of Canada, through the Wartime Prices and Trade Board, did what policing was necessary to restrain dealers from charging too much for scarce articles. The government did not leave it to private individuals to do the policing.

Even now, it cannot be claimed that there is any serious shortage of goods in relation to demand. Many dealers tell us that inventories are relatively high. If it becomes necessary to prevent excessively high prices, the government is free to act as it did in 1941. It does not need to rely upon private "law" and private policing to protect the consumer.

V. It is claimed that private resale price fixing creates public confidence in the branded product and thereby enhances the goodwill of the manufacturer.

It is true that the widespread national advertising of a branded article creates consumer interest and if the product is as good as the high pressure advertising claims, the goodwill of the manufacturer is increased.

But we deny that fixed prices at all stores and all over the Dominion of Canada is responsible for the consumer's confidence in the product. At times it works the other way. When a farmer goes to dealer after dealer and finds exactly the same price quoted for a similar make of water-bowls, let us say Beatty water-bowls, he does not necessarily think so highly of Beatty equipment because of the fixed prices. He probably likes Beatty equipment because, in his opinion, it is reliable and good.

The same applies to the housewife and her purchases of household goods. She is not going to lose faith in a well-known national brand just because she sees some price competition at the retail level. All she asks is for the advertising to be honest and the quality maintained. Then the manufacturer need not fear the loss of her goodwill.

VI. It is claimed by manufacturers that the practice of private resale price fixing enables the manufacturer to get a wider distribution of his products and greater sales because he can have more dealer outlets.

When the manufacturer fixes the resale retail price for his product, he sets a retailer's margin wide enough to attract a great many retailers to stock his product. In addition to this, the retailer is protected against price competition at the retail level. This naturally results in many dealer outlets and it is claimed works to the advantage of the manufacturers.

This argument for private resale price fixing backs up our argument against the practice, namely, that the margins are fixed high enough to satisfy the high cost distributors as well as medium to low cost distributors. It is logical that the higher the margin allowed the more dealers will be attracted to stock the goods. The aim of the manufacturer to widen his distribution by having more dealers is only logical to a certain degree. Enticing an unnecessary number of dealers into the field inevitably results in a lessened "turn-over" per dealer; i.e., a lessened net profit, ultimately requiring the fixed high "mark-up" to maintain his business.

Even if this argument were true to the extent of helping one firm (i.e. more agencies) the same argument does not hold water when multiplied on a national scale for all goods coming under price fixing. If the same argument were valid on a national scale we could maintain prosperity on a high level in Canada by simply multiplying the distributing outlets for all goods. Thereby we would all have more goods to consume and everybody would be happy.

High standards of living do not come about as a result of many retail outlets and widespread distribution of goods. High standards of living arise out of high production per capita of goods. We only have so many resources to develop and so much manpower available. These are the basis of our standard of living, not retail outlets. In fact a practice which results in a multiplicity of outlets, excessive highly coloured and high pressure national advertising,

ostentatious showrooms and fancy superfluous service actually tends to slow down the advancement of our standard of living by devoting too much of our manpower and resources on wasteful things.

### *Summary*

The national policy of price floors for farm products, established by Federal legislation, is not comparable in any way with private resale price fixing enforced by "private law". Price floors for farm products are established to take care of exceptional and temporary market situations. These prices have never been established at "incentive" levels.

Fluid milk prices established by Provincial Milk Control Boards in city markets are only set after careful and full enquiry by a competent Board appointed by the Government. The Board takes into consideration the conflicting interests of producers, distributors and consumers and arrives at a decision which in its opinion is in the public interest. This legal "above board", procedure is a far cry from the restrictive and undemocratic procedure of private resale price fixing.

We are firmly convinced that the restrictive trade practice technically called, "resale price maintenance", which we have labelled by its true name, "private resale price fixing", in the long run is not in the interests of labour, business, consumers and farmers; in other words it is not in the public interest.

Our reasons for this opinion are as follows:

#### Private resale price fixing,

- (1) Eliminates price competition at the retail level by the device of each dealer agreeing with the manufacturer to sell at fixed prices. This creates a combine in fact if not in law.
- (2) Is often given the sham appearance of legality by agreements which have not as yet stood the test of the laws of the land.
- (3) Is privately enforced and policed by intimidation, threats and actual denial of supplies.
- (4) Results in a wider margin between the manufacturer and the consumer than would be the case under conditions of a free price system.
- (5) Results in excessive retail margins for the most efficient distributors much of which is devoted to excessive high pressure national advertising, which the public indirectly has to pay for.
- (6) Is the foster mother of combines at the manufacturing level, for when manufacturers can hold their individual price lines at the retail level they have a stronger urge to make formal or informal agreements amongst themselves.
- (7) By the power of its combine in fact at the retail level and its direct aid in the fostering of combines at the manufacturing level, is largely responsible for the inflexibility of the price level which in periods of falling demand, results in deliberately planned restriction of production and heavy unemployment.

### *Recommendation*

The evidence appears so overwhelming against the practice of private resale price fixing that we recommend to this committee the following action:

That the Combines Investigation Act be amended to declare this practice illegal without any qualifying clause as to whether or not it is in the public interest.



## APPENDIX C

## MEMORANDUM

Submitted to

THE JOINT COMMITTEE OF THE SENATE AND HOUSE OF COMMONS

by

THE CANADIAN ASSOCIATION OF RADIO AND APPLIANCE DEALERS

On behalf of the President and the Board of Directors of the Canadian Association of Radio and Appliance Dealers, may I express our sincere appreciation for the privilege of presenting to the Committee, at this time, this memorandum regarding resale price maintenance.

The Canadian Association of Radio and Appliance Dealers was organized some nine years ago by a group of independent retail radio and appliance dealers to act primarily as liaison between the radio and appliance retailers, other retail groups and the various agencies of the government concerned with the then war economy. The success which this group achieved in this function led to the establishment of the present permanent organization, which has been recognized for the past nine years as the spokesman for some 6,000 independent radio, television and appliance dealers in Canada.

*Resale Price Maintenance*

On September 16th, 1950 this Association forwarded to the Hon. J. H. MacQuarrie a letter expressing the views of the members of this Association with regard to the proposed amendments to the Combines Legislation insofar as the terms of reference of the MacQuarrie Committee were concerned, namely:

To study in the light of present day conditions the purposes and methods of the Combines Investigation Act and related Canadian Statutes, and the Legislation of other countries insofar as the latter appeared likely to afford assistance, and to recommend what amendments, if any, should be made to our Canadian Legislation in order to make it a more effective instrument for the encouraging and safe guarding of our free economy.

Our letter at the time, while it did contain some reference to resale price maintenance, dealt generally with the broader aspects of the Combines Legislation then under consideration. Had we realized that resale price maintenance was to have been singled out for special study, we would have certainly dwelt to much greater degree on this subject which is of considerable importance in our industry (80-90 per cent of which is price maintained). In view of this, it is the feeling of the Directors of this Association that the conclusions and recommendations contained in the MacQuarrie report are not based on full and complete facts insofar as our industry is concerned. We therefore cannot agree with the MacQuarrie Committee that in the field of radios and appliances resale price maintenance

Is a restrictive or monopolistic practice which does not promote the general welfare.

We therefore respectfully request that a further and more complete inquiry be made by either this joint Committee or some other agency with full power to deal with this one particular subject—Resale Price Maintenance and its effect on the consumer.

We would like to point out at this time that there already is Legislation under the Combines Investigation Act affecting resale price maintenance "Chapter 26 of the revised Statutes of Canada, 1927, Section 2, Subsection 1 (C). To our knowledge the question of the mere practice of resale price maintenance has never been decided in a Canadian court, nor has any inquiry under the Combines Investigation Act yet been directed specifically toward the question, even though it is law. If it is felt that resale price maintenance does "operate to the detriment or against the interest of the public", this question should be settled for everyone's benefit by due process of law.

In the meantime, may we submit to this Committee just a few of the reasons why it is felt that in the field of radio and appliance, resale price maintenance does not operate or is likely to operate to the "detriment or against the interest of the public".

### *Prices*

From the following figures showing the average retail discount in the radio and appliance business you will see that in every case, brand names merchandise (which carry a suggested resale price) is less than non-brand lines which are not subject to the same degree of price maintenance.

Washers—Brand names "suggested resale prices"

Average discount 30-35 per cent

Non-brand lines—Average discount 40-46 per cent

Ranges—Brand names "suggested resale prices"

Average discount  $33\frac{1}{2}$ - $37\frac{1}{2}$  per cent

Non-brand lines—Average discount 35-50 per cent

Refrigerators—Brand names "suggested resale prices"

Average discount 30-35 per cent

Non-brand lines—Average discount 35-50 per cent

From the foregoing discounts it will be seen that in the case of brand name lines (suggested resale prices) the margins are considerably less than in the case of non-brand merchandise. These discounts are common to 6,000 radio and appliance dealers across Canada.

### *Engineering and Research*

All of the brand name manufacturers provide adequate engineering, research and service staffs to assure the public of continued high quality and outstanding improvements of design year after year. Non-brand manufacturers do not maintain the same facilities nor are they nearly as stable economically.

### *Adequate Distribution*

The present system of suggested resale prices as practised by the radio and appliance industry assures every consumer in Canada of the opportunity to purchase the same high quality merchandise in any part of the country, no matter how remote, at the same price.

It also assures the public against our retail distribution system, controlling in the hands of a few large department, mail order and chain stores, thereby creating a very dangerous monopoly. At the present time 70% of our retail distribution is through small independent retail outlets, it is easy to see how important this is to our country's economy and to the small independent business man who is the life blood of this country.

The publication of suggested resale prices also prevents the dealer in the smaller communities from increasing his price out of line with prices in the larger communities where there are a number of dealers.

*Public Acceptance*

We submit to the Committee the fact that the public themselves have already decided this question of whether or not resale price maintenance is "operating for or against their interest".

The consumer has every opportunity to decide, under the present retail practice, whether or not he wishes to purchase a brand name appliance (which usually carries a suggested resale price) or a non-brand line (which usually has no fixed price). The dealer sells the non-brand appliance for what he thinks he can get for it (usually less than the brand lines). The attached figures show that despite this choice, the consumer overwhelmingly prefers brand name merchandise.

These charts show the results of a survey made in 1947. One thousand households across Canada were represented in the survey on the following appliances:

Radios  
Refrigerators  
Ranges  
Washing Machines

In conclusion, it is the opinion of this Association that in the field of radio and appliances, resale price maintenance does not operate "to the detriment or against the interest of the public" because:—

1. It permits the operation of sufficient small independent retail dealers to prevent the centralizing of retail distribution into the hands of a few large chain, mail order and department stores, who might be encouraged into monopolistic practices.
2. It assures the public that in the event the dealer is not able or does not choose to fulfil his obligations, regarding warranty service or general service. Brand line manufacturers will still see that this service is carried out.
3. It enables all consumers no matter how far removed from the large centres to have the same advantage of high quality brand merchandise at the same prices as the consumer in the larger centres.
4. In periods of declining prices it prevents dealers from continuing to sell to the consumer at the former higher prices.

It is also the opinion of this Association that the MacQuarrie Committee, did not obtain sufficient facts and evidence nor conduct a sufficiently thorough investigation into this question of resale price maintenance, particularly in the radio and appliance field, to arrive at the conclusions and recommendations contained in their Interim Report.

*All of which is respectfully submitted,*

Yours very truly,

FRANK L. QUARTERMAINE,

*General Manager.*



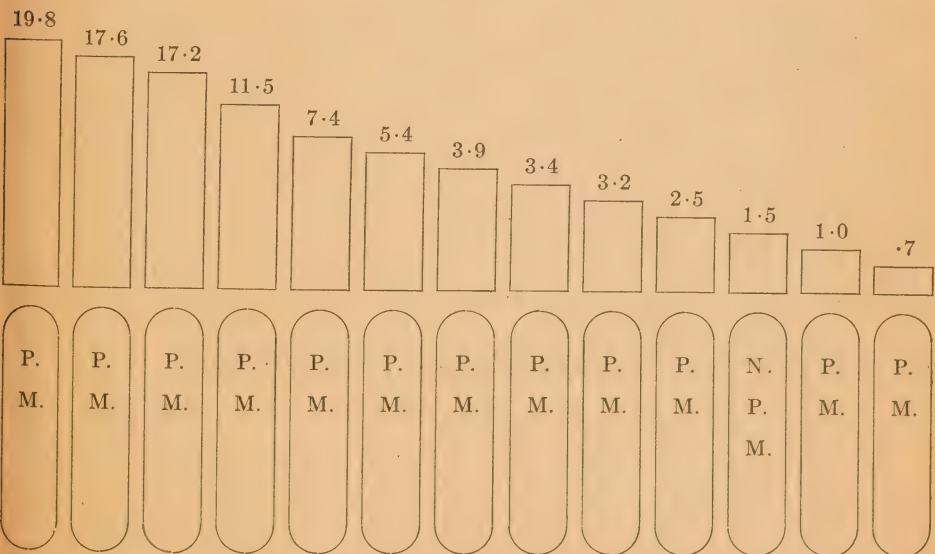
## RADIOS

*Brand Breakdown of Radios Now in Use*

While over 70 different brands in all were mentioned, only those rating more than 1% have been charted above. Many of the remaining brands mentioned have been off the market for years. Car radios not included in above table.

*What Brand Will They Select?*

When asked what brand they will select when purchasing a new radio, the 500 members of the panel gave the following answer.



## REFRIGERATORS

*The Brands in Use*

The table below indicates the brands of refrigerators owned by Panel Members as reported in their replies.

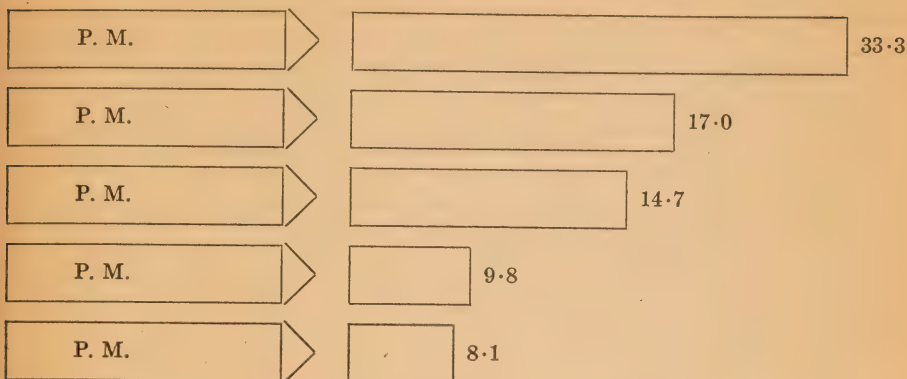
P. M.	16.3%
P. M.	15.0%
P. M.	14.7%
P. M.	7.7%
P. M.	7.0%
N. P. M.	3.2%
N. P. M.	3.2%
N. P. M.	2.6%
P. M.	2.2%
P. M.	1.9%
N. P. M.	1.9%
P. M.	1.6%
P. M.	1.6%
N. P. M.	1.6%

Some 14 other "brands" were mentioned, rating however less than 1.5% each.

## REFRIGERATORS

*What Brand Will They Select?*

Brands preferred by those planning to buy refrigerators within the next 2 years.



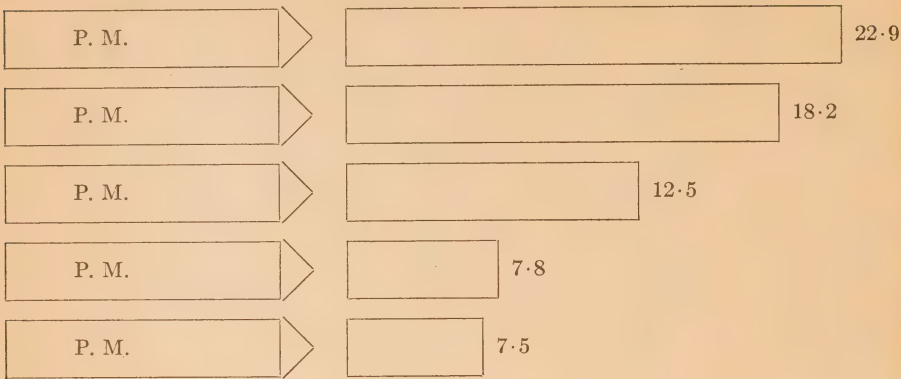
Also mentioned were 10 other makes of refrigerators averaging 1.7% each.



RANGES

*Brand Distribution of Ranges*

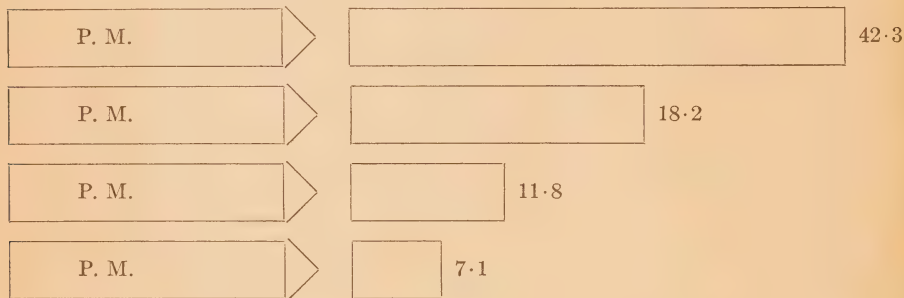
Brand distribution of homes equipped with Electric Ranges to date.



Also mentioned were 18 other makes of ranges averaging 1.7% each.

*What Brand Will They Select?*

Brands preferred by those planning to buy a range within next two years.

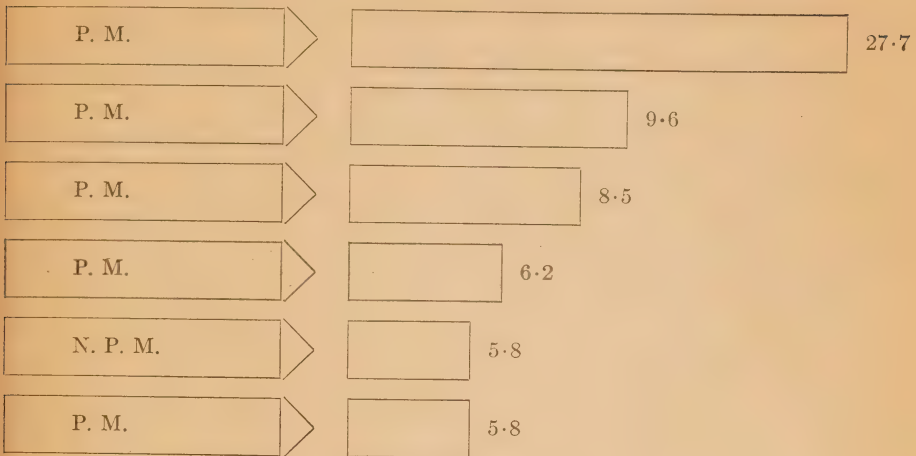


Also mentioned were 8 other makes of ranges averaging 2.6% each.

## WASHERS

*Brand Distribution of Washers*

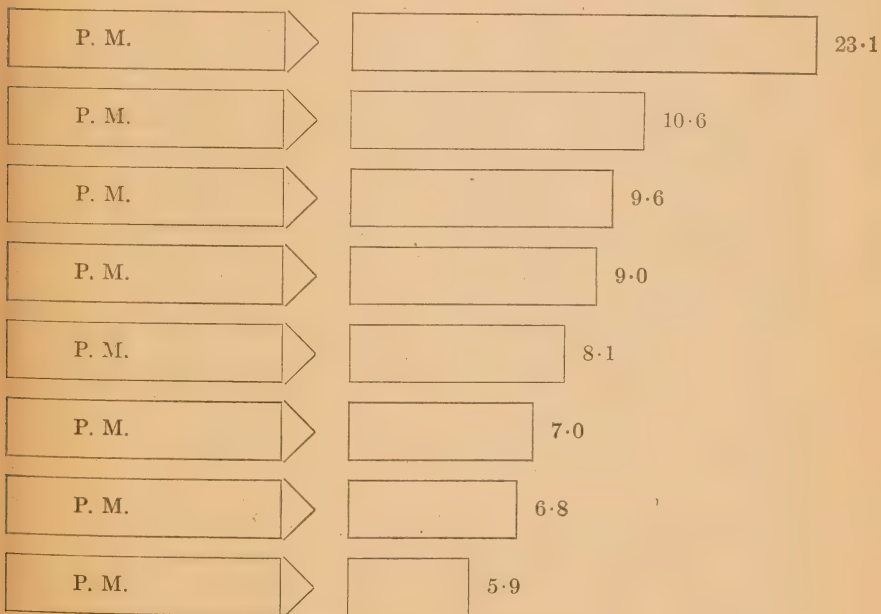
Brand distribution of homes equipped with washers to date.



Also mentioned were 16 other makes of washers averaging 2.2% each, and 53 other brands receiving only 2 mentions or less.

*What Brand Will They Select?*

Brands preferred by those planning to buy a washer within next two years.



Also mentioned were 11 other makes of washers averaging 1.8% each.

## APPENDIX D

## BRIEF SUBMITTED BY THE T. EATON COMPANY

November 27, 1951

RE: RESALE PRICE MAINTENANCE

The most serious aspect of Resale Price Maintenance is its effect on the Consumer Price.

Retail Prices in a free economy are finally established through the forces of supply and demand, where consumer preference is the major factor, and competition within the Distributive Trades. In those articles covered by Resale Price Maintenance, the forces of supply and demand cease to be an effective factor in establishing the price, and the manufacturer establishes the price at what he thinks the market will bear. This is not nearly as true a test as where consumer preference and competition are the governing factors.

The basic idea of price maintenance is to establish and maintain the price of an article in a way that will prevent it from finding its proper and true level. This method in most cases keeps the price higher than it would be if the price were allowed to find its own level in open competition.

In those cases where there are many manufacturers of competing products, the controlled price cannot be raised too far above the market, but in those cases where competition between manufacturers is reduced or is non-existent, which is the case in many products where they are only made by one or a closely-knit group of manufacturers, competition ceases to be a factor and prices can be fixed at what the traffic will bear, and the consumer suffers by such higher prices.

The cost of merchandise to the consumer is made up largely of

- (a) the cost of production, which includes the cost of raw materials and labour, and
- (b) the cost of distribution, which is mainly the cost of labour. In order for merchandise to reach the consumer at the lowest possible price, we contend that there must be free competition at both of these levels. The cost of distribution of general merchandise in most cases, runs from 25 per cent up to as high as 50 per cent of the Consumer price. Where price-maintained lines are introduced, this reduces substantially and almost eliminates competition amongst retailers for the distributor's share of the Consumer Price, and the consumer is forced to rely solely upon the efficiency of the manufacturing operation and the competition between manufacturers to keep prices at a reasonable level. Competition between the retailers for the distributor's share of the consumer price can do just as much and more to reduce the final cost of the article to the consumer as efficiency and competition at the manufacturer's level.

Retailing is a very complex trade, and there are many different types of retailers giving varying amounts and types of service to customers; e.g.

1. the store in which the customs picks out her own merchandise, pays cash for it at the wicket and carries it home, as in the modern marketeria;
2. the limited service-type store where the customer picks out her own merchandise with some help from clerks, pays cash for it and may have it delivered, as in some of the lower-priced basement stores;



3. the full-type service store, such as department stores with telephone-order service and delivery;
4. the high-style and exclusive-type speciality shop, giving individual attention and service;
5. the credit store where merchandise may be purchased at the same price for long-term credit as for cash.

The service performed by the retailer in each of these stores is different and varies in cost, and the consumer is entitled to expect to buy merchandise cheaper in the store offering the minimum type of service than in the store giving maximum service.

Price maintenance prohibits the retailer from offering the consumer these savings. The retailer should be free to decide for himself what type of service to give and price his goods according to the cost of his operation. The Retailer should also be able to decide for himself whether to operate his store in a high rental location where taxes are high, or whether to operate off the beaten path in a low rental area where taxes are low, and to price his goods lower on this account in order to offer his customers some inducement to shop in the less convenient location.

On price maintained lines the price is the same for all Retailers no matter what type of service and no matter where the store is located. To force all Retailers to sell price maintained articles at the same price is not in the best interest of customers or Retailers. There is room in Canada for all types of retailers. To force such restrictions on two manufacturers of similar articles would be definitely against the best interest of the consumer. Is it any less serious to rule out all competition between the Retailers? To force manufacturers to do so would be to eliminate practically all competition. In price-maintained lines, competition is practically eliminated at the Retail level, without Retailers having any voice in the matter and in many cases against their better judgment.

Retailing is not an exact science, and conditions are always changing. The costs of distribution are high and as wages continue to climb the cost of distribution, which is largely made up of wages, must climb higher. Efficient retailers must continually seek new and more efficient ways of distribution, in order to bring merchandise to the customer at the lowest possible price. On price controlled lines the retailer gains little by reducing his cost of operation as he cannot pass these savings on to his customer, and thus attract more customers. All he can do to attempt to bring in more customers is to give additional services which is no answer to the consumer who wants to buy as cheaply as possible.

In price maintained goods the manufacturer sets the retailer's margin, although he cannot know what the retailer's cost of operation is, and the manufacturer exercises control over the retailer's business in this way, although he has no financial interest in the retailer's business and assumes none of the risks of the retailer's operation.

If the price-maintenance idea continues to grow to the point where it covers the majority of articles on the market, it will have a paralyzing effect on progress in the Retail Trade. If the grocery field had been covered by price maintenance agreements to the same extent as the electrical appliance field is today, the super market development could not have taken place. It is most important for retailers to seek out and introduce new techniques which will lower their costs, and thus enable them to give lower prices to the consumer. Any policy that stands in the way of progress in the important field of distribution should be considered as objectionable on that account alone.

The policy of price maintenance does away with the advantage, to Retailers and Customers alike, of large-volume orders. During the War, it was proven

very conclusively that where a manufacturer can keep his production line full at all times, he can produce more efficiently and at lower cost. Large volume orders enable manufacturers, in many cases, to keep their plants busy during the off season and to maintain full production. This saving, in many cases, is passed on to the Retailer placing large-volume orders. This results in lower prices to the Consuming Public. Price fixing eliminates any advantage to the Retailer in placing large-volume orders as he cannot pass this saving on to the Customer.

Price maintenance has given rise to other practices which are not in the interest of the Consumer. Many credit-type Stores now sell articles at the same price for credit as for cash. To sell for cash is the most efficient way for any Retailer to sell goods, and if the customer wishes to buy for cash, he should be encouraged to do so and obtain the benefit therefrom. In price maintained merchandise, the cash customer is discriminated against as credit stores sell on 18 months terms at the same price as for cash, and the Retailer who wishes to sell these articles for cash at less than credit stores' prices is prevented by price maintenance agreements. This is unfair to the Cash Customer, yet there is no way by which the Retailer who wants to sell at less for Cash can do so on price-maintained lines.

Another development arising out of price-maintained merchandise is the discount house, through which price-maintained merchandise can be purchased at a discount from the price-maintained list. This is another evidence that markups on price-maintained merchandise are higher than necessary for efficient Retail Trade. At the same time as established Retailers are prevented from selling below the price-maintained lines, supplies of the same articles are available to the public through these outlets of uncertain origin. Their business is made possible by the price-maintenance policy, and legitimate Retailers are discriminated against because they are not permitted to meet and undersell this type of competition, which they would do in a normal competitive market.

The real problem in connection with retail price maintenance is very simple. Should Retailers be allowed to operate in the most efficient way possible and pass the savings obtained by efficiency on to the consumer by lower prices? Or, should the prices be kept high in order to make retailing and manufacturing a more comfortable way of life by eliminating competitive prices which tend to keep prices low? In other words, do we believe in the principle of competition, or should competition be eliminated in order to allow inefficient operators to remain in the field of distribution? The consumer would be better off if competition was allowed to have a free rein. This method reduces prices, sells more goods, enlarges the market, increases production and consumption. To restrict competition is merely protecting one part of the economic system at the expense of the consumer, and in the long run, would not be in the interest of Canada. Price maintenance, in effect, subsidizes inefficient operators both retail and producer at the expense of the consuming public. We suggest that, in this particular case, the benefits to the distributive trades and the manufacturers are far outweighed by the increase in price to the Consumer.

The function of both manufacturing and distribution is the supplying of consumer needs. The consumer should be allowed a wide choice in the selection of articles made by manufacturers and also in the choice of services given by the Retailer. The consumer should be allowed to select freely, i.e. whether to buy at the expensive specialty store, or at the super market, at the big store with all its variety, or the small store with its personal service, between the local community store or the downtown store. All operate at different costs and all should be allowed to price their own goods according to their own costs of operation. Customers will in the long run adjust prices

between the various stores according to their own preferences. The Consumer should be the final judge. In price maintained goods the manufacturer sets the price and in effect says to the Consumer, you can buy where you choose but the price is the same at all stores.

To force all Retailers to sell an article at the same price without regard to his cost is much the same as forcing all manufacturers of a product, e.g., refrigerators, to sell all models at one price, i.e., the price of the deluxe refrigerator. It would be an injustice to the consumer to charge the same for a strip model, a standard model and a deluxe model refrigerator. It is similarly an injustice to the consumers to force them to pay the same price for the services of the Retailer whether he operates a self service, standard service, or deluxe service store.

The Consumer gains most and achieves the lowest prices under circumstances where Retailers compete freely for the Consumer's dollar, as then the Consumers are free to shop where they please according to the service that they require.

In conclusion, the most serious aspect of Resale price Maintenance is that it prevents normal competitive factors from performing their proper essential function in the distributive field and thus prevents the consumer price from finding its own level in a free competitive market.

We firmly believe that the customer who buys for Cash should pay less than the Customer who buys on credit with 18 months to pay. Through markups that are over generous, resale price maintenance in many lines enables the Credit Store to sell on credit with 18 months to pay and still maintain an adequate profit, yet prohibits the merchant wishing to sell for cash from underselling that price, although he would be quite willing to sell for less and still be able to make an adequate profit at the lower cash price.

For the reasons herein set forth we, as a Company, are opposed to Retail price fixing by Manufacturers and Suppliers, as we believe that the Consumer should be able to purchase merchandise at the lowest possible price compatible with the service that they obtain from the Retailer from whom they wish to buy. It tends to make Retailing too static and resists, and may prevent, advances in Retailing methods, which will bring new techniques and lower margins and hence lower prices to the Consumer.

Attached hereto is a list of about 500 items on sale in our Toronto Store (which would represent but a proportion of the total in our organization), purchased by us from a great many manufacturers, each of whom has fixed the retail price at which we must sell the goods, and no doubt these manufacturers follow the same practice with other Retailers.



A LIST OF SOME NATIONALLY ADVERTISED TYPES OF MERCHANDISE  
WHERE THE RETAIL PRICE IS FIXED BY THE SUPPLIER

Men's Gloves  
Women's Gloves  
Children's Gloves  
Hosiery  
Umbrellas  
Men's Handkerchiefs  
Thermos Bottles  
Books  
Ladies' Fountain Pens  
Gentlemen's Fountain Pens  
Mechanical Pencils  
Fountain Pen and Mechanical Pencil Set  
Desk Sets  
Playing Cards  
Artist Pencils  
Greeting Cards  
Ink  
Typewriters  
Wrapping Paper  
Seals and Tags  
Blank Books  
Stationery—Boxed  
Wood Pencils  
Napkins  
Paper Towels  
Duplicators  
Chair Pads  
Ball Point Pens  
Writing Sets  
Leads and Erasers  
Cosmetics, Make-up, etc.  
Colognes  
Perfumes  
Dusting Powders  
Facial Tissues  
Nail Polishes, Removers, etc.  
Manicure Implements  
Powder Puffs  
Compacts, and Pill Boxes, etc.  
Combs  
Brushes (all kinds)  
Shampoos  
Hair Dyes and Tints  
Home Permanents  
Brilliantines and Hair Fixes  
Baby Oils and Creams and Baby Preparations  
Talcums  
Hand Preparations  
Foot Preparations  
Tooth Pastes and Powders  
Tooth Brushes  
Mouth Washes  
Depilatories  
Deodorants

Suntan Preparations  
Bath Brushes  
Shaving Brushes  
Bathing Caps  
Patent Medicines  
Pharmaceutical Preparations  
Insecticides  
First Aid Supplies  
Barometers  
Thermometers  
Surgical Supplies  
Trusses  
Abdominal Supports  
Soda Siphons  
Elastic Stockings  
Sun Lamps  
Heat Bulbs  
Bathroom Scales  
Feminine Hygiene Products  
Rubber Gloves  
Heating Pads  
Electric Blankets  
Nursery Supplies  
Deodorizers  
Sun Glasses  
Hot Water Bottles  
Soap—all kinds,  
    natural and synthetic  
Cleaners  
Toilet Tissue  
Cameras—Snapshot  
Cameras—Movie  
Films  
Enlargers  
Printing and Developing  
    Equipment and Chemicals  
Chocolate Bars  
Chewing Gum  
Packages Chocolates  
Silverplated Flatware  
Sterling Silver Flatware  
Sterling Silver Toilet Sets  
Electric Kitchen Clocks  
Electric Desk Clocks  
Electric Alarm Clocks  
Manual-wind Mantel Clocks  
Manual-wind Alarm Clocks  
Chime and Strike Mantel Clocks  
Electric Shavers  
Watches  
Cigarette Lighters  
Shoe Polish  
Bobby Pins  
Deco Transfers  
Hair Nets  
Shoulder Pads  
Curlers

Sewing Cotton	Sprinklers
Rubber Girdles	Nozzles
Elastics	Hedge Clippers
Hair Pins	Cement Mixers
Wagons	Electric Pumps
Pedal Cars	Lawn Rakes
Baby Carriages	Hose Reels
Building Sets	Fertilizer Spreaders
Push Toys (metal)	Wheelbarrows
Rubber Building Bricks	Water Putty
Electric Trains	Patching Plaster
Men's Ties	Patching Cement
Suspenders	Joint Filler
Belts	Plastic Tile
Garters	Plastic Squares (decorated)
Jewellery	Strip Seal
Handkerchiefs	Moulding (Metal)
Collars	Arborite
Shirts	Made-to-Measure Sash
Pyjamas	Rock Salt
Underwear	Air Driers
Swim Shorts	Twist-ems
Play Shorts	Gasoline Engines
Hose	$\frac{1}{4}$ H.P. Motors (Electric) 25 and 60 cycle
Windbreakers	$\frac{1}{2}$ H.P. Motors (Electric) 25 and 60 cycle
Hats	$\frac{1}{2}$ H.P. Motors (Electric) 25 and 60 cycle
Caps	$\frac{3}{4}$ H.P. Motors (Electric) 25 and 60 cycle
Sweaters	1 H.P. Motors (Electric) 25 and 60 cycle
Boys' Ties	Jointers
Shirts	Circular Saws
Underwear	Scroll Saws
Sweaters	Drill Presses
Overalls	Lathes
Overcoats (velour)	Sanders
Slacks	Shapers
Vyella Material—Cotton and Wool	Electric Drills
Tootal Material—Rayon	Polishing Heads
Patterns	Multi-Plex Saws
Electric Blankets	Pulleys
Men's Shoes	Belts
Women's Shoes	Metal Lathes
Children's Shoes	Portable Electric Hand Saws
Oven Glassware	Saw Blades
China Figures	Dado Sets
Wedgewood China	Grinding Wheels
Glues and Adhesives	Moulding Heads
Liquid Solder	Moulding Head Cutters
Household Cement	Mandrels
Plastic Resin	Bench Legs
Wallpaper Remover	Hand Grinders (Electric)
Cold Water Paste Powder	Machine Stands (Steel and Cast)
Plastic Wood	Mortising Chisels and Bits
Solvent	Mortising Attachments
Door Pulls	Plug Cutters
Door Knobs	Spindles
Door Hinges	Shaper Cutters
Cupboard Catches	Scroll Saw Blades
Abrasives	Band Saw Blades
Riding Tractors	Patterns
Tractors	Machine Stands
Sump Pumps	Lathe Tools (Metal and Wood)
	Drive Centre

Cup Centre	Baskets
Screw Centre	Mops
Work Arbors	Brooms
Face Plates	Brushes
Chucks	Polishes
Machine Vises	Waxes
Flexible Shafts	Kordite Clothes Lines
Precision Tools	Kordite Clothes Pegs
Aluminum Double Boilers	Aluminum Clothes Lines
Aluminum Covered Saucepans	Anodized Clothes Lines
Aluminum Open Saucepans	Tables and Stools
Aluminum Cullenders	Clothes Line Pulleys
Aluminum Percolators	Metal Ironing Boards
Aluminum Covered Kettles	Ironing Board Pad and Cover
Aluminum Preserving Kettles	Bundle Buggies
Aluminum Trays	Rotary Clothes Driers
Aluminum Roasters	Bathroom Scales
Aluminum Pudding Pans	Ice Crushers
Aluminum Frying Pans	Thermos Ice Bucket
Aluminum Cake Pans	Ice Cube Tray
Aluminum Pie Plates	Orange Peeler
Aluminum Potato Pots	Can Opener
Aluminum Dripolators	Egg Beater
Aluminum Roast Pans or Bake Pans	Kitchen Gadget
Aluminum Pressure Cookers	Cooking Thermometers
Aluminum Dishpans	Potato Peelers
Aluminum Cookie Sheets	Pot Cleaners
Aluminum Egg Poacher	Steel Wool
Aluminum Muffin Covers	Presto Timers
Aluminum Griddles	Thermos Bottles
Aluminum Filter Coffee Makers	Lunch Pails
Aluminum Tea Pots	Stove Mats
Gasoline Irons	Air Wick
All Pyrex Glass Ware	Bird Seed
Picnic Jugs	Electric Stoves
Stainless Steel Saucepans	Gas Stoves
Stainless Steel Double Boilers	Space Heaters
Stainless Steel Dutch Ovens	Oil Burners
Stainless Steel Boiling Kettles	Furnaces
Stainless Steel Tea Pots	Washing Machines
Stainless Steel Percolators	Ironers
Stainless Steel Cullenders	Dryers
Stainless Steel Pressure Cookers	Plumbing Equipment
Stainless Steel Dripolators	Kitchen Cabinet Units
Chrome Plated Ware Tea Kettles	Radios
Chrome Plated Ware Whistling Kettles	Phonographs
Japanned Tin Ware Bread Boxes	Records
Japanned Tin Ware Cookie Tins	Sheet Music
Japanned Tin Ware Sani Boy Cans	Musical Instruments
Japanned Tin Ware Step On Cans	Boys' Bicycles
Japanned Tin Ware Pantry Sets	Girls' Bicycles
Japanned Tin Ware Dust Pans	Juvenile Bicycles
Japanned Tin Ware Waste Paper Basket	Golf Balls
Japanned Tin Ware Cleanser Cans	Dog Food
All Plastic Bread Boxes	Fishing Rods
All Plastic Cannister Sets	Fishing Reels
Rubber Dish Drainers	Fishing Lines
Sink Mats	Guns
Drainboard Trays	Golf Clubs
Stove Mat	Skates
Plate Racks	Skating Boots
Shelf Cushions	Outboard Motors
	Boats



Roller Skates	Carpet Sweepers
Car Washing Brushes	Attachments
Car Wax	Pianos
Flashlights	Maple Dining Room Furniture
Paint	Maple Bedroom Furniture
Automobile Polish	Maple Occasional Pieces
Auto Cleaners	Upholstered Furniture
Basketball Shoes	Electric Grates
Tennis Balls	Chrome Office Furniture
Women's Hats	Rattan Upholstered Furniture
Misses' Hats	Occasional Tables
Girls' Hats	Felt and Spring Filled
Panties	Mattresses
Vests	Box Springs
Petticoats	Metal Springs
Slips	Pillows
Night Gowns	Crib Mattresses
Pyjamas	Wallpaper
Bed Jackets	Wall Coverings
Corsets	Masonite Wallboard
Corselettes	Sheetrock
Girdles	Metal Mouldings
Pantie Girdles	Metal and Plastic Wall Tiles
Brassieres	Modernfold Doors
Garter Belts	House Paints
Sanitary Pads	Enamels
Baby Shoes	Varnishes
Baby Powder	Special Paints and Finishes
Baby Oil	Waxes
Baby Soap	Polishes
Diapers	Cleaners
Diaper Linings	Pictures
Baby Nipples	Bulbs
Baby Bottles	Baby Feeding Dish
Q-Tips	Batteries
Bottle Warmers	Broilers
Infant's Bathing Suits	Coffee Percolators
Sleepers	Coffee Makers (Glass)
Girls' Dresses	Coffee Maker Stoves
Girls' Bathing Suits	Coffee Grinders
Girls' Shorts	Coffee Urns
Batteries	Chimes (Electrical)
Wool	Chimes (Mechanical)
Instruction Books	Egg Cookers
Crocket Cotton	Egg Cooker Sets
Embroidery Floss	Elements
Women's Dresses	Fans
Misses's Dresses	Flashlights
Raincoats	Hotplates
Coats	Handi-Chefs
Suits	Heating Pads
Sweaters	Hair Dryers
Bathing Suits	Hedge Trimmers
Shorts	Heaters
Bra & Short Sets	Heater Fans
Shirts	Irons
Ski Suits	Iron Stands
Ski Pants	Kettles
Electric Refrigerators	Liquidizers
Deep Freeze Units	Mixers
Home Humidifiers	Ovens
Electric Vacuum Cleaners	Pressure Cookers
Electric Floor Polishers	Rangettes

Sandwich Toasters  
Sheets (Electric)  
Table Cookers  
Toasters  
Teapots (Glass) ✓

Transformers  
Vibrators  
Waffle Irons  
Lamps  
Lamp Shades.







HOUSE OF COMMONS

Fifth Session—Twenty-first Parliament  
1951

(Second Session)

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JOINT COMMITTEE OF THE SENATE  
AND THE HOUSE OF COMMONS

ON

COMBINES LEGISLATION

Joint Chairmen—The Honourable Senator A. L. Beaubien  
Mr. James Sinclair, M.P.

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MINUTES OF PROCEEDINGS AND EVIDENCE

No. 13

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WEDNESDAY, DECEMBER 5, 1951

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WITNESSES:

Mr. R. F. Wilson, K.C., Counsel, and Mr. Norman J. Leach, General  
Manager, Canadian Jewellers Association.

OTTAWA  
EDMOND CLOUTIER, C.M.G., O.A., D.S.P.  
PRINTER TO THE KING'S MOST EXCELLENT MAJESTY  
CONTROLLER OF STATIONERY  
1951





## MINUTES OF PROCEEDINGS

DECEMBER 5, 1951

The Joint Committee of The Senate and the House of Commons on Combines Legislation met at 3.30 o'clock p.m., the Joint Chairmen, the Honourable Senator A. L. Beaubien and Mr. James Sinclair, M.P., were present, Mr. Sinclair presiding.

*Also present:*

*For the Senate:* The Honourable Senators Aseltine, Burchill, Dupuis, Fogo, Golding, Horner, Vaillancourt.

*For the House of Commons:* Messrs. Beaudry, Blair, Boucher, Carroll, Carter, Cauchon, Croll, Dickey, Mrs. Fairclough, Messrs. Fulton, Garson, Harrison, Hees, Jutras, MacInnis, Murray (*Oxford*), McLean (*Huron-Perth*), Roberge, Shaw, Stuart (*Charlotte*), Thatcher.

*In attendance:* Mr. Thos. N. Phelan, K.C., and Mr. Guy Favreau, Counsel for the Committee, Mr. R. F. Wilson, K.C., Counsel, and Mr. Norman J. Leach, General Manager, Canadian Jewellers Association.

The presiding Chairman presented the Fifth Report of the Sub-Committee on Agenda and Procedure which is as follows:

Your Sub-committee on Agenda and Procedure met this afternoon and agreed to recommend:

1. That briefs received from the following organizations be printed as appendices to the Committee's Minutes of Proceedings and Evidence: Bulova Watch Company Limited; Retail Merchants Association of Saskatchewan; Six Provincial Branches of the Canadian Association of Consumers.
2. That at the meeting on Friday, December 7 the first order of business be a discussion of Mr. Croll's notice of motion relating to loss leaders; that the time allotted to each member during this debate be restricted to five minutes; that during this discussion the meeting be open to the public and thereafter the Committee adopt the procedure normally followed when a report to the House is under consideration.

Mr. Croll moved that the Fifth Report of the Sub-Committee on Agenda and Procedure be concurred in.

Mr. Fulton moved in amendment thereto, that Mr. Justice MacQuarrie, Mr. M. A. Robinson, of the T. Eaton Company and Mr. J. R. Thomson, be called before the Committee for examination.

After discussion, and the question having been put on the said amendment, it was negatived on the following division:

*Yeas:* The Honourable Senator Aseltine. Messrs. Beaudry, Blair, Mrs. Fairclough, Messrs. Fulton, Hees, Murray (*Oxford*), Thatcher—8

*Nays:* The Honourable Senators Beaubien, Burchill, Fogo, Golding, Vaillancourt. Messrs. Boucher, Carroll, Carter, Cauchon, Croll, Dickey, Garson, Harrison, Jutras, MacInnis, McLean (*Huron-Perth*), Roberge, Shaw, Stuart (*Charlotte*)—19

Mr. Beaudry moved, in amendment to Mr. Croll's motion, that Mr. F. A. McGregor be recalled for further questioning.

After discussion, and the question having been put on the said amendment, it was negatived on the following division:

*Yeas:* The Honourable Senator Aseltine. Messrs. Beaudry, Blair, Carroll, Dickey, Mrs. Fairclough, Messrs. Fulton, Hees, MacInnis, Murray (*Oxford*), Thatcher—11

*Nays:* The Honourable Senators Beaubien, Burchill, Fogo, Golding, Vaillancourt. Messrs. Boucher, Carter, Cauchon, Croll, Garson, Harrison, Jutras, McLean (*Huron-Perth*), Roberge, Shaw, Stuart (*Charlotte*)—16

Mr. Thatcher moved, in amendment to Mr. Croll's motion, that on Friday the Committee continue its public hearings until the end of the session and then make only an interim report to Parliament; and further that the Committee recommend that it be reappointed, to continue its hearings, early in the 1952 session.

And the question having been put on the said amendment, it was negatived.

And the question having been put on Mr. Croll's motion, it was agreed to.

Mr. Beaudry moved.

The consideration by this committee of such evidence as may have been presented to the MacQuarrie committee is precluded by privilege.

That after hearing a number of witnesses in favour of and against price maintenance representing in all a very considerable proportion of the citizens of this country, and since some members of the committee are precluded by time from securing evidence from witnesses heard, this committee comes to the conclusion that the nature of the verbal and written evidence submitted does not allow the committee to give the subject matter serious consideration.

And that this committee report to the House that it has no sufficient grounds for agreeing to or dissenting from the interim report presented by the MacQuarrie Commission.

After discussion, and the question having been put on the said motion, it was negatived on the following division:

*Yeas:* The Honourable Senator Aseltine. Messrs. Beaudry, Blair, Mrs. Fairclough, Messrs. Fulton, Hees, Murray (*Oxford*), Thatcher—8

*Nays:* The Honourable Senators Beaubien, Burchill, Fogo, Golding, Vaillancourt. Messrs. Boucher, Carroll, Carter, Cauchon, Croll, Dickey, Garson, Harrison, Jutras, MacInnis, McLean (*Huron-Perth*), Roberge, Shaw, Stuart (*Charlotte*)—19

Mr. Wilson was called and heard.

Mr. Leach was called, tabled a brief on behalf of the Canadian Jewellers Association, which is printed as Appendix A to this day's Minutes of Proceedings and Evidence, was heard and questioned thereon.

The witnesses retired.

In accordance with the recommendation contained in the Fourth Report of the Sub-Committee on Agenda and Procedure, concurred in on November 30, the following documents are printed as appendices to this day's Minutes of Proceedings and Evidence:

*Appendix B:* Brief submitted by The Retail Merchants Association of Canada.

*Appendix C:* Brief submitted by The Co-Operative Union of Canada and Le Conseil Canadien de la Co-operation.

*Appendix D:* Brief submitted by Interprovincial Co-operatives Limited.

At 5.50 o'clock p.m. the Committee adjourned until Thursday, December 6, at 10.30 o'clock a.m.

A. L. BURGESS,  
*Clerk of the Committee*





## EVIDENCE

DECEMBER 4, 1951

3.30 p.m.

The CHAIRMAN: Gentlemen, would you come to order? The first item will be the report of our agenda committee which has just finished its meeting.

(See Minutes of Proceedings).

Mr. BEAUDRY: Mr. Chairman, I would like to raise a point of privilege, and it will probably be the last time I will have anything to say. The chairman stated yesterday on a point of privilege which I raised for the purpose of establishing my right to put questions to the witness, McGregor, that the question of recalling the witness was to be left to the steering committee and the committee as a whole. He further stated that in any case he was well within his rights as chairman of a committee to prevent a member from asking questions. I pointed out that Beauchesne's third edition states clearly:

578—In committee of the whole House any member may put questions directly to the witness, and

547—Generally speaking, the proceedings of a select (special) committee are assimilated, like those of standing committee, to those of a committee of the whole House.

To this the chairman claimed he had authority to substantiate his claim that he is within his rights in preventing a member from asking questions. Since my point of privilege and its further argumentation rests in part on the chairman establishing proof and authority to substantiate his statement, I respectfully submit that he now indicate his sources of reference and quote the citation which upholds his view. There is certainly nothing in Beauchesne to that effect.

The CHAIRMAN: I will not comment on Mr. Beaudry's statement of what I said yesterday when I pointed out the committee is the master of its own fate. A motion was made in the steering committee to have Mr. Fred McGregor recalled and it was defeated, but it is perfectly in order for anyone here to make a motion now to have him recalled.

Mr. BEAUDRY: I resume my point of privilege if I may. My question to the chairman was to request him to procure authorities asserting his right to prevent a member from asking repetitive questions.

The CHAIRMAN: While Mr. Burgess is looking it up, the members will recall we adopted the ten-minute rule and Mr. Beaudry had twenty-five minutes of Mr. McGregor.

Mr. BEAUDRY: After all, the citation was promised last night.

The CHAIRMAN: The clerk is finding it. He actually had it yesterday and gave the citation to me about members asking repetitive questions.

Mr. BEAUDRY: How in the name of Pete can I be repetitive if I haven't asked a question yet? My point of privilege, which is based on the fact that I have not had an opportunity of asking one single question of the witness since the moment we have had his brief in written form, surely I cannot be accused of being repetitive before I have given the Chair a question materially on which it could base its decision. Even then the Chair would be at some difficulty to

establish its rulings since we have no printed record before us as yet, and since the chairman has already ruled twice, on pages 405 and 407, that the reporter may not re-read the record as to questions put.

If the decision of the steering committee is put to a vote of the general committee I would point out that the members are asked to vote on a principle which constitutes the first and most important privilege of parliament, and of the citizens—I refer to citations 210, 211, 212.

And should the decision of the committee be that I be not allowed to question the witness, I would deem it my duty to my constituents, as indicated in 210, to bring the question of my privilege before Mr. Speaker.

Furthermore, the minutes of our meetings should indicate very clearly that a week ago both the chairman and the members supported my view that I should be allowed to question the witness after having had an opportunity of going over his brief. Following the witness' verbal presentation of his brief, in defiance of our permanent decision reported on page 6 of our minutes, but condoned by the committee for the sake of celerity, (page 388) although no vote of the committee authorized this departure from our normal procedure, the chairman dismissed objections most summarily. I refer to page 394 of the minutes when the question was raised by Mr. Fulton.

Once the presentation was terminated—and it had lasted well over an hour—the chairman turned the witness over to Mr. Hees, who declined (page 401), to Mr. Croll, who declined as having no questions, to Mr. MacInnis, who stated he wished for no time, to Mr. Shaw, who said he didn't have a question, and then to myself.

The chairman having stated that the ten-minute rule would apply on the first round of questioning, I in turn declined, and the chairman made the statement that on this point he was in the hands of the committee. Mr. Croll and the chairman suggested that I should then be given whatever time I wanted, and I construed their statement, as I am sure everyone else in the committee did, as a means of perhaps saving some of the committee's time, since no one wished to question before reading the brief which was just being placed in our hands at that moment.

Mr. Thatcher moved for adjournment so that we could study the brief, but the motion was defeated. It was then that I began questioning, without having seen the brief, in order to accelerate proceedings, if possible, and very distinctly with the understanding of the chairman, of Mr. Croll and I am sure of the entire committee, that I would be given—to use the chairman's own words—"whatever time I wanted."

Some minutes later we were called to the chamber for a vote, following which I resumed questioning, but without being able to ascertain what my line of questioning extemporaneously almost an hour earlier had been.

Much to my amazement the chair interrupted me a few minutes later to turn the witness over to Mr. Croll who had already stated he had no questions to ask. Since then, having had an opportunity of reading the brief, I am not to be allowed to put questions to the witness, although Mr. Croll, who had originally declined, has now had two opportunities, and Mr. Hees, who had originally declined, has questioned at least once, although Mr. Shaw, who was in the same position, had a similar privilege.

In view of the chairman's decision last night I am now in this most peculiar position. All those members who were ahead of me on the original list and who declined in order to have an opportunity of seeing the brief first, or who did not qualify their decision, have now questioned, and in some cases questioned twice, and I, a member of the same committee, may not ask a single question since reading the brief in spite of the fact that at our very



first meeting of this committee a rule was made, and never amended by vote or unanimous consent, that no witness be heard and questioned until his brief had been in the hands of the committee.

I insist, sir, on my essential privilege of free speech, basing this on the rules of the House and in respect of the facts.

The CHAIRMAN: I will just summarize this by saying you have had twenty-five minutes with Mr. McGregor. If you will look at the record you will see you asked him the same question three times. He did not understand the question, I myself did not and I don't think any member of the Committee did. Those who have been here for the last few years are delighted to see you have such solicitude for your constituents. As far as Mr. McGregor is concerned, he appeared here in a different category to everyone else.

Mr. BEAUDRY: So I see.

The CHAIRMAN: Mr. McGregor was invited to come before this committee by vote of this committee, and he appeared before us by invitation.

Mr. BEAUDRY: Where is the vote?

The CHAIRMAN: He was not subpoenaed, as we had the right to do, but rather he accepted our invitation.

Mr. BEAUDRY: On a point of order, Mr. Chairman, I would like the chair to substantiate that Mr. McGregor was invited to come before us through a vote.

Mr. CROLL: In the steering committee we voted on it and it was accepted by the main committee.

Mr. THATCHER: On a point of order, Mr. Chairman.

The CHAIRMAN: On this question of calling Mr. McGregor. A member raised that question in the Steering Committee, the question of calling Mr. McGregor. It was voted on in the Steering Committee and the report of the Steering Committee was accepted by this committee. One of the provisions of the report of the Steering Committee was—and you will find it on page 345 of the Minutes of Proceedings of Tuesday, November 27, No. 7, as follows:

"On motion of Mr. Croll the fourth recommendation of the sub-committee was concurred in"—that we invite Mr. McGregor.

Mr. BEAUDRY: Would you read that part of the report, Mr. Chairman, because you have interpreted things in a strange light, including my absence from the House last year, to which I will return later.

The CHAIRMAN: I will read recommendation No. 4:

That notwithstanding any previous decision as to the hours of sitting, the committee sit on Wednesday, November 28, at 3.30 o'clock p.m., and that Mr. F. A. McGregor, former Commissioner of the Combines Investigation Act, be called for that day.

Mr. BEAUDRY: I can read that, too, and this means that we changed our hours of sitting on that day to hear Mr. McGregor.

Mr. THATCHER: Does this discussion not make one point clear. Surely we are trying to rush this matter through with undue haste. I have now about 40 briefs in my file, that have been turned in here, and which cannot be heard. One lady yesterday, told us she represented about 20,000 retailers, yet she was refused a hearing. Mr. Beaudry says he did not get a chance to question Mr. McGregor in the way he wished. I had 10 minutes, but I too would like to have had much more time. Do these facts not emphasize again how foolish it would be to try and push this legislation through in the next few days?

Surely it is sensible for us to carry on into the next session to give the matter adequate consideration. Therefore I shall back Mr. Beaudry up in his request.

The CHAIRMAN: There is a motion before the committee that the report of the Steering Committee be accepted.

Mr. FULTON: I wish to move an amendment, and the point of discussion is very much as that raised by Mr. Beaudry by way of privilege. I do not wish to criticize anybody, but I think this must be discussed by way of an amendment to the report of the Steering Committee. On the Steering Committee I suggested that Mr. McGregor be recalled.

Mr. CROLL: Let us have the amendment.

Mr. FULTON: I will move my amendment when I am ready to move it.

The CHAIRMAN: There is a motion before the Committee, and Mr. Fulton is speaking to the motion.

Mr. FULTON: I have stated that I am going to move an amendment. I am entitled to speak to the motion and when I have made my point I will move the amendment.

The CHAIRMAN: You are quite right, Mr. Fulton. Go ahead.

Mr. FULTON: I have suggested here that Mr. McGregor be recalled, amongst other reasons because I knew that there is more than one member of the committee who feels that Mr. McGregor was not adequately questioned, that there are points in Mr. McGregor's brief and points arising out of his re-statement, and there I point out that no other witness has had greater facilities extended to him than has Mr. McGregor in making his re-statement.

The CHAIRMAN: Mr. Preston and Mr. Harris both did it.

Mr. FULTON: I said no other witness has had greater facilities. Indeed, Mr. Beaudry's whole point just raised by way of privilege would not have been necessary were we not, as Mr. Thatcher has just said, unduly rushing this whole thing. Now, reference has been made to the appearance yesterday morning, I think it was, of Miss Hyndman on behalf of Mr. Thomson, the vice-president of the Retail Merchants Association of Canada. I just want to lay before the committee the proposition, and ask the committee to consider it very carefully, whether they are not, in effect, doing themselves and a wide segment of the Canadian community an injustice by deciding we will not hear further evidence after today. I was sent a copy of a telegram which was sent to yourself by Miss Hyndman, and it reads as follows:

Yesterday morning you refused to hear representations from J. R. Thomson, St. Catharines, Vice President Retail Merchants Association of Canada and refused to hear my reasons for asking that he be allowed to make representations for his association you said because merchants association affiliated with Canadian retail federation whose representatives had been heard. Now learn that you are today hearing representatives of Ontario Retail Hardware Association and National Jewellers Association both affiliates of Canadian retail federation. Thomson himself a grocer represents association forty years older than retail federation and one which is primarily composed of small independent storekeepers who have different experience interests and service from Eatons and other chain stores and mail order houses. Thomson not asking opportunity to cry about what proposed legislation will do to him and other small merchants but in public interest wants opportunity to demonstrate that proposed legislation won't cure nor even affect high cost of living nor inflation and to submit reasons why loss leader practice greatest economic evil in retail field and one which will lead

inevitably to conditions which brought about Stevens investigation. Do you again refuse to hear representative from The Retail Merchants Association of Canada. M. P. Hyndman.

And there are other important witnesses or persons representing important and substantial bodies in the Canadian community who are asking the opportunity to be heard before this committee.

I have a telegram handed to me by Mrs. Fairclough, who asked me to raise it at the same time I raised this other one. It is from C. F. Fraser, Director, Institute of Public Affairs, Dalhousie University. It reads as follows:

Following is text of telegram sent today to James Sinclair chairman parliamentary committee Resale Price maintenance begins. Deeply concerned press reports suggesting no further submissions to be heard by your committee. Earnestly request that every consideration be given extending hearings so that interested individuals and groups in maritime provinces may be heard. Infer from your letter Nov. 29 that such consideration would be given and hope may be permitted to appear late December or when session begins following Christmas recess.

Another telegram to Mrs. Fairclough, which she has asked me to lay before the committee at the same time, addressed to herself, from Chapleau, reads as follows:

Concerned large department store brief accepted without recognizing possible selfish monopoly. Suggest reviewing markups their own and non price protected products versus price protected items Stevens report. Proposed legislation spells doom hundreds small merchants who are backbone our economy. Understand many briefs not yet heard by committee. This not democratic way and bad for Canada. E. M. Yale.

Mr. Chairman, I rest my whole case particularly on the last sentence of that last telegram that is signed "E. M. Yale". To proceed as we are proceeding and to cut off this committee's deliberations tomorrow afternoon and go then into secret session, with the exception only of a short debate on Mr. Croll's motion, would, I submit, not be the democratic way and would be bad for Canada.

We have all these individuals and associations who wish to give evidence before this committee. Now, I know that in the beginning we decided that we would not hear repetitious briefs, but when we have decided that we will hear the Ontario Hardware Retail Association and the National Jewellers Association, who are both affiliates of the Canadian Retail Federation, then the excuse of not having sufficient time to hear Mr. Thomson and his organization is, I think, only going to be taken as the rankest form of discrimination and is certainly a procedure very prejudicial to the arrival by this committee at a fair decision. There are other types of witnesses from whom there could be no question that we would hear repetitious evidence, but there are others from whom we would hear evidence most helpful in arriving at a proper decision in this matter, and I refer particularly to Mr. Justice MacQuarrie, who was chairman of the MacQuarrie Committee.

I think that we would be interested in knowing a number of things from Mr. Justice MacQuarrie; such as what members of this committee were in fact present and took an active part in the preparation of the report; on what evidence the report and recommendations were based, and matters of that kind; because you, Mr. Chairman, and the Minister of Justice, had made such a point of your position that this committee must accept the MacQuarrie report that I consider it extremely peculiar, to say the least, and a good deal more than peculiar, that there should be any resistance to the suggestion that Mr. Justice MacQuarrie be asked to tell us just exactly how he and his committee arrived



at their recommendations. Then there is the potential witness, Mr. Robinson, a member I believe of the executive, or a high officer in the T. Eaton firm. That firm has presented us with a brief which appears to carry some weight with some members of the committee, a brief opposing the continuance of resale price maintenance.

Mr. Chairman, in my submission, we should call Mr. Robinson to come here, if necessary by subpoena, and compel the production of books, records and papers to enable us to arrive at a fair assessment of the profit margin that that firm makes; that firm which is so strongly opposed to price maintenance and particularly by reason of the profit margin they made on non-price maintained goods as compared to price maintained goods. I would like to ask Eaton's representative to appear under oath and give the profit margins on what they call their branded goods and the profit margin of other branded goods; and I think we will then see very clearly why the Eaton company is opposed to resale price maintenance. Because certainly all the evidence before the committee, or before the Steven's commission showed that in every respect they made a far wider profit margin on non-maintained goods than they did on price maintained lines which they handled. I think that is the type of evidence we should certainly have before this committee before we are able to arrive at conclusions. There are a number of other witnesses whom I think that we should call but I am not going to try to make my list exclusive or exhaustive. I will leave it to anybody else who has a strong desire to recall Mr. McGregor, or anyone else they wish, to so indicate, but I think that those three, Mr. Thomson, Mr. MacQuarrie and Mr. Robinson should be heard before this committee and accordingly I move in amendment to the steering committee report that Mr. Justice MacQuarrie, Mr. Robinson and Mr. J. R. Thomson be called before the committee for examination.

The CHAIRMAN: Mr. Harrison?

Mr. HARRISON: If I might I would like to speak on a point of order raised by Mr. Beaudry.

The CHAIRMAN: I think if you were to speak to the amendment it would be better.

Mr. HARRISON: In that case then, I would like to say something too, but I would also like to speak on a point of privilege if I may.

The CHAIRMAN: All right.

Mr. HARRISON: I think that I may say to the committee that I am probably still in the same boat as Mr. Beaudry in that I wanted to question Mr. McGregor yesterday, and also, due to the lapse of time, a number of the other members of the committee find themselves in a similar position. I do not think I lost any privilege. I think the situation is simply one where, due to a lack of time, we just have to take our chance in this committee to get our questions in, having regard to the members we have here. To all intents and purposes the committee assembled here obtained all the information from Mr. McGregor that we require for the purpose of our inquiry.

The CHAIRMAN: Mr. Hees?

Mr. HEES: Mr. Chairman, I think, first of all dealing with what Mr. Beaudry said, it is most important that members of the committee have a fair chance to ask questions that they would like to ask, and I would suggest that Mr. McGregor be asked if he would be kind enough to come back again, and I would suggest that Mr. Beaudry be given say 20 minutes and then other members have a like opportunity.

The CHAIRMAN: Is that an amendment to the amendment?

Mr. HEES: No, I am just speaking on the amendment.

The CHAIRMAN: What do you suggest? Are you going to submit an amendment to Mr. Fulton's amendment, that Mr. McGregor be invited to come back, or that he be called back?

Mr. FULTON: Then, Mr. Chairman, I will include Mr. McGregor in my amendment.

Mr. HEES: If you want me to, I would like to put that as an amendment to the amendment to include Mr. McGregor and Mr. MacQuarrie. On the point of having Mr. McGregor come back may I say that the reason I suggested that is that I feel that his knowledge is very great and I would like to see Mr. Beaudry given the privilege of questioning him for a reasonable period of time; the gentleman on my right as well. Also, as you perhaps can remember, I requested on two occasions that Mr. MacQuarrie be asked to come before this committee and I suggest that because I think that having had Mr. McGregor before us and having been able to ask him questions has meant that we have learned a great deal. I think we would also stand to learn a great deal by asking Mr. Justice MacQuarrie a few questions. I think he is a most important witness. After all, it is on the recommendations of his committee that the proposed legislation is to be based. I think that if he could establish that the report was formed after a factual examination of the facts in the case it would help us a very great deal. Anyway, I for one would like to know on what basis he came to his conclusions, and I therefore support Mr. Fulton's amendment.

The CHAIRMAN: Mr. MacInnis:

Mr. MACINNIS: I do not think we should hurry unduly, Mr. Chairman, in dealing with this motion because it is a most important one. It has been suggested that we should have Mr. MacQuarrie come here to justify his report. Surely, that is a fantastic suggestion as it raises the question of integrity.

Mr. FULTON: On a question of privilege. Mr. Chairman; I am speaking on a question of privilege now—

Mr. MACINNIS: Well, Mr. Chairman, there is no question of privilege in the right of an individual—

Mr. FULTON: Mr. Chairman, I am speaking on a question of privilege. Mr. MacInnis says that it has been suggested that we should have Mr. MacQuarrie come here to justify his report. That is not what I said. I want to make that very clear; it was to ask upon what basis he arrived at his report.

The CHAIRMAN: To me that is the same thing.

Mr. MACINNIS: I would like to know what the difference is between them; on what basis you arrived at your report, and justifying your evidence.

Mr. HEES: The point was, on what basis do you think he came to his conclusions.

The CHAIRMAN: Mr. MacInnis has the floor.

Mr. MACINNIS: It is just a case of bringing a judge into court and saying to him; now, justify your verdict in this case.

Mr. FULTON: It is not the same thing at all.

The CHAIRMAN: Mr. Fulton and Mr. Hees, you were not interrupted by anybody while you were making your submissions. I ask you to concede other members the same courtesy.

Mr. MACINNIS: And another thing I cannot understand is why the T. Eaton Company should be brought here when their situation is not dissimilar to that of any other witness. Mr. Fulton has suggested that they come here and bring with them all their books and records and what have you from the store. So far in our proceedings we have not asked any of the witnesses who have appeared before this committee to bring their books and records nor

have we asked any of the witnesses who have appeared before this committee to be sworn. Are the T. Eaton Company so unreliable that they cannot be heard except under oath, and even under oath that they must have their books and records to make doubly sure that they have told the truth? Surely that is carrying obstructionist tactics in this committee to unusual lengths.

Mr. CROLL: Mr. Chairman, may I just make this comment. I am not going to say anything about what has already been said by Mr. MacInnis. I am particularly concerned with the statement in the wire—that part of it which said that the chairman refused to hear any reasons why Mr. Thomson should be heard. Those of us who were here yesterday and heard the application made, know that the applicant was given ample opportunity to be heard. He spoke for perhaps ten minutes and gave every conceivable reason, and there is no justification for the statement to be made that the chairman refused to hear any reasons why Mr. Thomson, on behalf of the retail grocers, should be heard. If for no other reason than that I am voting against the amendment.

Mr. BEAUDRY: Speaking on the amendment—

The CHAIRMAN: Mr. Beaudry.

Mr. BEAUDRY: I am afraid the amendment places me in a peculiar position.

Mr. HEES: What, again?

Mr. BEAUDRY: And I insist on my right to speak as a member of parliament, and I insist on having Mr. McGregor, who has been a witness, called to give me sufficient time to put questions to him—as has been done by eight or nine or ten members of the committee—after reading his brief. I do not know in what way I should voice my amendment to the amendment so that Mr. McGregor's case can be looked at entirely separately. I am afraid that if I put it as a sub-amendment the vote on my sub-amendment, which is necessarily dependent upon the main amendment, would be adverse to my contention—even if we had a unanimous vote on that particular point.

The CHAIRMAN: I would suggest that I delete this last reference to Mr. McGregor, that I put this amendment, and that I then accept an amendment from you?

Mr. CAROLL: Is the gentleman's amendment in order? It is not wholly in order?

The CHAIRMAN: The clerk has pointed out to me that we have already made a decision on this in the main committee, on the motion by Mrs. Fairclough that the T. Eaton Company and other witnesses be called. There is the rule that we do not reverse ourselves.

Mr. FULTON: Is that a rule? It is a rule of new application in this committee, then.

The CHAIRMAN: That is exactly what I told Mr. Burgess, but I said that in view of the decision the fair thing was to put the motion.

Mr. CARROLL: As I understand the motion put by the gentleman, he moves that Mr. McGregor be recalled.

The CHAIRMAN: Yes.

Mr. CARROLL: All right, and there is an amendment that Mr. McGregor be recalled and also—

Mr. CROLL: Mr. Thomson.

Mr. CARROLL: But that is not the amendment.

Mr. BEAUDRY: I have made no motion yet, Mr. Carroll.

The CHAIRMAN: Mr. Fulton's amendment before the committee is that Mr. Justice MacQuarrie, Mr. Robinson of the T. Eaton Company, and Mr. J. R. Thomson be called before the committee for examination.



Mr. FULTON: Speaking to the amendment, I just wish to reply to two comments made by Mr. MacInnis.

Mr. MACINNIS: On a point of order?

Mr. FULTON: You said that you did not interrupt me when I was speaking.

Mr. MACINNIS: The mover of an amendment has not the right to close the debate.

The CHAIRMAN: He has not the right to speak twice on an amendment.

Mr. FULTON: Oh, yes.

The CHAIRMAN: Pardon me,—in committee, but not in the House.

Mr. FULTON: Members have the right to speak as many times as they like, and I was going to reply to Mr. MacInnis. He said two things had absolutely no application for the committee whatsoever. He has made his own comment with respect to those who make silly remarks and I will let the committee judge to whom that should apply.

He says that the amendment should be turned down because I suggested, while speaking, that the T. Eaton Company should be called—if necessary subpoenaed and put under oath. I point out to you that I have consistently, I think persistently, maintained that this committee should have the right to call such witnesses as it wishes and on such terms—whether they be under oath or otherwise—as the committee may determine.

I think I have made it plain that in my view we will be denying ourselves facts and figures we need unless we call certain witnesses. I feel very strongly that the T. Eaton Company figures will be of great interest to the committee and of great help. Therefore, I also agree and I lay considerable emphasis on the point that Mr. Robinson should be called and, if necessary I said, be required to produce his books and testify under oath. In that respect I make no difference between that witness and any other witness whom the committee might want to call before it.

With respect to the position of Mr. Justice MacQuarrie, I wish merely to point out that the point drawn by Mr. MacInnis has absolutely no application. He said it was as if we asked a judge to appear before the committee to justify a verdict which he had arrived at in a case before him. If that were so, and I wish it were a similar situation, the proceedings would be different. If it were a case which Mr. Justice MacQuarrie had been trying we would know the case because, except in the most unusual circumstances, it would have been tried in open court; we could have attended and heard all of the evidence; we would know, without the necessity of making any further inquiry, upon what evidence and upon what facts and figures and what other considerations the judge had reached his verdict. In this case, we have absolutely no such information whatever. Indeed, not only are we without knowledge as to what considerations Mr. Justice MacQuarrie relied upon in coming to his decision, but we have had it suggested by two reliable witnesses before us, witnesses representing large groups, that in their opinion—well, no, that is an inference and I will not go that far. We have had a statement by them that not only were they not asked but they did not submit any facts or figures to the MacQuarrie Commission. From that I certainly, without anything further, feel we are free to draw the inference that there was not sufficient evidence before the MacQuarrie Commission to justify it arriving at its decisions and recommendations.

I simply suggest that Mr. Justice MacQuarrie be asked to come here and to tell us, perhaps not all the specific evidence, but what sort of evidence he had before him—so that we may know what evidence he had before him and whether it was sufficient evidence upon which to base the recommendations that are made.

Mr. MACINNIS: I will be much briefer than Mr. Fulton was.

He said he was not proposing any different method or treatment for the Eaton Company than any other company, but the fact remains that he did not propose that any other company should bring their records here. He did not propose that any company should do that.

Mr. FULTON: I did not propose that any other company be called.

Mr. BEAUDRY: We have heard from a company—

Mr. MACINNIS: I have one over Mr. Fulton because I have already voted for bringing the T. Eaton Company here—when Mr. Fulton was not here to vote.

Mr. FULTON: I cannot stand up under that one.

Mr. HEES: I find it very hard to understand the government's reluctance to ask Mr. MacQuarrie—

Mr. CROLL: What has the government got to do with it?

Mr. HEES: I say the government because they feel that his report is well founded—

The CHAIRMAN: What is your evidence that the government has said that Mr. MacQuarrie is not to be called?

Mr. HEES: Well, I have asked a considerable number of times—

Mr. CAUCHON: When?

Mr. HEES: On two different occasions I have asked that Mr. Justice MacQuarrie be asked to come here.

The CHAIRMAN: You have asked the government?

Mr. HEES: I have asked this committee—

The CHAIRMAN: Oh, yes.

Mr. HEES: And there has been no evidence of any willingness on the part of the committee to ask him. As the committee is dominated by government members and a government chairman, therefore it is to be taken the government does not want him to come.

The CHAIRMAN: That is pretty silly reasoning.

Mr. HEES: I think it is pretty good reasoning. A good way you can put a stop to that silly reasoning is to say: yes, we think enough of Mr. Justice MacQuarrie's report and the recommendations and conclusions he arrived at to ask him to come here and for all time settle the point to the public's satisfaction—that the conclusions were based on sound facts and reasoning. That would for all time put an end to a belief which is in a great many people's minds that this is a purely theoretical report, the kind that would come out of a classroom rather than out of practical business.

It is a good opportunity for the government to show this is a good report. I say the government, and this is a government committee—government dominated wholly, and completely—and it is a great opportunity for the government to prove this is a good report and their legislation is justified.

Otherwise, there is going to be tremendous doubt left in the minds of a lot of people.

Mr. CARROLL: Mr. Hees should take the same ground that he did on the question of veterans' pensions. He got up in the House and said that he was the man, along with a few others, who forced the government—

Mr. HEES: That is right, and I say thank you very much Mr. Carroll. If Mr. Justice MacQuarrie did appear I would say it would be because of the opposition's demands that he appear to justify his case here—and for no other reason. But the government does not want him to come. They seem to be a little afraid.

The CHAIRMAN: If I might interrupt you, I think you will recall that you yourself demanded that we hear Mr. McGregor. It was not the government who asked for it, but it was done at your request. Therefore I think you should let the committee make the same decision either to call or not to call according to the judgment of the members of this committee.

Since 1867 it has been our parliamentary practice for those who were in the majority in the House to have a majority in committees.

Mr. FULTON: Can you, Mr. Chairman, or any member of the committee suggest any reason why Mr. McGregor should be the only outside witness that this committee is to call?

The CHAIRMAN: By decision of this committee.

Mr. CROLL: May I give the reason, Mr. Chairman, why Mr. McGregor was the only outside witness called? If you will recall it, it was Mr. Hees who insisted that Mr. McGregor be called.

The CHAIRMAN: Yes.

Mr. CROLL: And he had only one reason in doing so, he hoped that Mr. McGregor would embarrass this government.

Mr. HEES: Oh no, no. As one of your constituents, Mr. Croll, I object to that remark. He is my member of parliament and he will be hearing about this at the polls.

The CHAIRMAN: Order, order!

Mr. CROLL: I won't get to the polls.

Hon. Mr. GARSON: I would like to make just a few remarks, Mr. Chairman, in fairness to the MacQuarrie committee and its report, before the vote is taken. I have been rather afraid to say anything in this debate for fear that I would be accused, as a member of the government of trying to influence the committee.

The CHAIRMAN: Order!

Hon. Mr. GARSON: I think in common fairness that we should not permit some of the remarks that have been made, perhaps not intentionally, as reflecting upon the MacQuarrie committee.

I have been in public life for upwards of 25 years, and during that time I have had occasion to see a good many reports of the general character of the MacQuarrie report, and I would like to say that I do not think I can recall a single one of all those reports I have seen in which the arguments, pro and con, have been more admirably and comprehensively summarized than has been done in this MacQuarrie report. So I defy any reasonably minded person who has not got some ulterior axe to grind or some ulterior purpose to serve to say that on the face of it that report is not abundantly clear as to just how the conclusions therein are arrived at.

Mr. FULTON: Well, Mr. Chairman, I say it, and I do not accept the hon. member's definition.

The CHAIRMAN: Order!

Hon. Mr. GARSON: I said "any reasonably minded person who has not got some ulterior axe to grind or some ulterior purpose to serve."

Mr. FULTON: I demand that the minister withdraw that remark, Mr. Chairman, on a question of privilege.

The CHAIRMAN: Order, order!

Hon. Mr. GARSON: The purpose of my hon. friend, of course, is to hold up the proceedings of this committee.



Mr. FULTON: I demand that the minister withdraw those remarks, Mr. Chairman.

The CHAIRMAN: Mr. Garson, I do think that to attribute ulterior motives to a member is unparliamentary.

Hon. Mr. GARSON: Well, then, Mr. Chairman, I will withdraw.

Mr. HEES: Now, now, do not spoil it.

The CHAIRMAN: Question? All those in favour of Mr. Fulton's amendment that Mr. Justice MacQuarrie, Mr. Thomson and Mr. Robinson be called before the committee for examination will please indicate by a show of hands. Those in favour of Mr. Fulton's amendment will say "aye"; those opposed will say "nay".

(At this point a recorded vote was taken).

The CLERK OF THE COMMITTEE: Those in favour, 8; those opposed 19.

Mr. THATCHER: Please read the main motion.

Mr. BEAUDRY: I have an amendment to make to the main motion. It is to this effect: that I ask that Mr. McGregor be recalled as a witness in order that I may have the privilege of asking him questions.

Mr. THATCHER: You had better say "that we may have the privilege".

Mr. BEAUDRY: That we may have the privilege of putting questions to him.

The CHAIRMAN: Is the committee ready for the question? All those in favour of Mr. Beaudry's amendment will say "aye". Those opposed to the amendment will say "nay".

The nays have it.

Mr. BEAUDRY: A recorded vote, please. Those in favour will say "yes"; those opposed will say "no".

(At this point a recorded vote was taken).

The CHAIRMAN: Now, the steering committee have recommended that at the meeting on Friday, December 7, the first order of business be a discussion of Mr. Croll's notice of motion relating to loss leaders; that the time allotted to each member during this debate be restricted to five minutes; that during this discussion the meeting be open to the public and thereafter the Committee adopt the procedure normally followed when a report to the House is under consideration.

Mr. THATCHER: I am sorry, I must move an amendment to that. I would like to move that on Friday the committee continue its public hearings until the end of the session and then make only an interim report to parliament. Further, I move that the committee asks to be reassembled to continue its hearings, early in the 1952 session. Surely it is clear we cannot hear all the evidence before us unless such a course is followed. If the legislation is rushed through a lot of people are going to be hurt without having a hearing.

The CHAIRMAN: All in favour of Mr. Thatcher's amendment say yea, and the contrary say nay.

Mr. CROLL: May we have a recorded vote on that, please?

The CHAIRMAN: All in favour of the adoption of the report of the agenda committee will say yea, contrary will say nay.

Carried.

Mr. BEAUDRY: I have a motion to make, and I will make it in a minute, but I would like to make one observation first. The committee has just by a majority vote prevented me from asking one question of the witness, McGregor, after having had an opportunity of reading his brief.

The CHAIRMAN: I would like to point out the order of business before us is to hear from these witnesses.

Mr. BEAUDRY: I still have a motion to make and I am making it:

That consideration by this committee of such evidence as may have been presented to the MacQuarrie Committee is precluded by privilege.

That after hearing a number of witnesses in favour of and against price maintenance representing in all a very considerable proportion of the citizens of this country, and since some members of the committee are precluded by time from securing evidence from witnesses heard, this committee comes to the conclusion that the nature of the verbal and written evidence submitted does not allow the committee to give the subject matter serious consideration.

And that this committee report to the House that it has no sufficient grounds for agreeing or dissenting with the interim report presented by the MacQuarrie Commission.

The CHAIRMAN: I will put the motion to the committee.

Mr. BEAUDRY: A recorded vote, please.

Motion defeated.

The CHAIRMAN: We have before us as our witnesses today representatives of the Canadian Jewellers' Association. The questioning will begin with an opening examination by Mr. Phelan. Perhaps you would introduce yourselves to the committee.

Mr. R. F. WILSON, K.C.: I am counsel for the Canadian Jewellers' Association and with me is Norman Leach, who is general manager of the association. With the permission of the chairman and my learned friend Mr. Phelan I would like to make some general observations and Mr. Leach will summarize the brief and answer any questions you may wish to put to him.

In the summary of our brief we ask that this committee carry out a thorough investigation of all the facts before making any decision. Secondly, we ask this committee to go into and determine what fair trade laws should be enacted, and we have gone on record as being opposed to combines. The MacQuarrie report, as I read the reference, had no basis for dealing with price maintenance at all, but in fairness to this committee, they did in a letter to the Canadian Jewellers' Association state they intended to deal with the question of price maintenance. It is our submission that the MacQuarrie Commission was not created to consider price maintenance at all, and for that reason this association, and other associations did not present briefs to that commission dealing with that subject.

It is our submission that while there is public clamour about the high price of goods, the high cost of living, this proposed legislation is not the answer and will not resolve the question of high prices.

We suggest to this committee that they make haste slowly for the reason firstly that if this type of legislation is enacted in the absence of some fair trade laws, it is going to be very upsetting to Canadian business, and secondly if this type of legislation is enacted as an amendment to the Combines Act, or put into any other Act, I assume that this government, as the government did in 1931 would in fairness to the people of this country and those who would be affected by it, submit the legality and constitutionality of the proposed legislation to the Supreme Court of Canada.

I would say as a lawyer after consideration of the Combines legislation reference in 1931 to the Supreme Court of Canada and later to the Privy Council, that the issue here is far greater and the proposition in the proposed legislation is far more startling when it is going be laid down that a business man cannot carry on his business in the way he has been accustomed to over a period of many years.

Gentlemen, this is not the place or time to argue whether or not the proposed legislation is constitutional or unconstitutional, but I do say that there is sufficient doubt about the constitutionality of it to suggest that if the government of the day does not see fit, after the legislation is enacted, to submit it to the Supreme Court of Canada, that some interested party will undoubtedly adopt that course.

Now, I will turn the matter over to Mr. Leach and he will give you any help he can.

**Norman Leach, General Manager, Canadian Jewellers' Association, called:**

The WITNESS: May I go back to what was said by Mr. Wilson as to the history of the MacQuarrie Committee, and I am not a parliamentarian, nor a lawyer, I am just a business person. The history of the thing as I see it is that Mr. McGregor reported to parliament he was having trouble prosecuting some bakers, and Mr. Gordon appeared and said that the bakers were carrying on a procedure as set up for them in the wartime days. Mr. McGregor then said there was no teeth in the combines legislation and as a consequence he had to resign. The MacQuarrie Committee was named to study combines legislation and how it could be strengthened so the commissioner could properly administer his office. We received a letter from the MacQuarrie Committee in January, 1950, asking us to submit a brief. I had previously read in the newspapers that Mr. McGregor had resigned and that Donald Gordon had supported the bakers, and it seemed to us the MacQuarrie Committee was studying combines. We simply said we did not favour combines, we believed in free competition and every individual manufacturer should be allowed to set his own price. We just sent him a letter and nobody realized there was going to be this implication, and I can say that in trade circles in June and July we were startled to hear that the manufacturer was not going to be allowed to tell the public what his price was going to be. We felt we had been badly misled, you can say we were stupid, if you like, that we did not present our case to the MacQuarrie Committee. I think that if the kind of evidence had been presented to the MacQuarrie Committee that you have been listening to in the last few weeks, this MacQuarrie report would have been different. I think we are presenting now what should have been presented in 1950.

To summarize our brief may I draw your attention to a typographical error on page 2. It says, "We do not feel that the point has been well established that there is no compulsion for the consumer to purchase price maintained items." I made a double negative. It should read, "We do not feel that the point has been well established that there is compulsion for the consumer to purchase price maintained items."

We maintain that although price maintained goods are offered to the public there is still a wide range of goods that the public can buy that are not price maintained, and if they want to they can buy price and quality maintained merchandise, and if they do not want to they can buy at any price they want. We also contend that in many instances non-price maintained merchandise is sold at a higher price than where the manufacturer has set the resale price. I believe Mr. Harris presented considerable evidence in that direction and I contend that is a condition which does exist. We say price maintenance means quality stability. The jeweller in Canada or in any other country sells merchandise the public does not know anything about. We contend, gentlemen, that in the case of the jewellery trade the brand and price is of great importance.



We sell timepieces, we sell gems, and we sell articles made of gold, silver and platinum. In many instances in the case of an article which is plated, it is plated on a base metal and finally there is silver or gold applied, and you or any member of the buying public has little knowledge of what you are buying until you know something about the brand and the advertising of the product. We contend, gentlemen, in the case of the jewellery trade uniquely, brand and price are of great importance. There are timepieces made in Switzerland and some made in the United States. I have a record here showing that there are some 300 brands of watches. The buying public must have confidence in the retailer, in the brand and in the price before it can buy intelligently one of those 300 brands of watches. Similarly, when you go to buy a diamond, or other merchandise, or any of the precious stones, you must have confidence in that firm you are doing business with, and that involves brand and recognized quality. We say to you that as far as the jewellery trade is concerned brand and price are of great concern to the buying public. On point No. 5, in our brief we deal with loss-leaders, and although by this time you may be bored with the question of loss-leaders, I can assure you that it is not a boring subject to the retail trade. Large buyers, characteristically, have an advantage over small buyers because they get quantity discounts. We do not quarrel with quantity discounts as such. A man who buys three little items puts the manufacturer to the expense of packaging and shipping, and all the expenses that go with it. That quantity discount, we suggest to you, is enough, that even with resale price maintenance the large buyer can consistently undersell the small retail merchant and still make the same margin of profit because of the quantity discount which enables him at any time, or all times, to undersell the small buyer and still make the same margin of profit the little man has been able to make.

If I may digress, I have something here which I think should be impressive to you. This is one edition of the *Toronto Daily Star* dated Thursday, November 22. I took two copies of the newspaper and went through it and clipped all the bargain ads that I could find. There are over 25 of them. I will refer to them quickly:

Those are watches with one-third to one-half off; here is rawhide luggage, approximately 25 per cent off; here are diamond rings at one-half off; there are ladies' coats, save \$15 on every coat; here are more ladies' coats, regular \$89 for \$66; here is a free slipper offer with every pair of shoes you buy; here are ladies' fur coats, regular \$295 for \$179, etc.

Your hear about the price of watches being up quite high, and so on. Here is an offer of a 15 jewel Swiss watch at \$15.95, on which a 35 per cent tax has been paid, so I assume that is not a high price for a 15 jewel Swiss watch. Here are men's handkerchiefs, regular 3 for \$1.15, now 3 for 95 cents. Those are television sets, save \$250, save \$200. There are fur coats, regular \$395 for \$198. Fur coats valued up to \$750 for \$499. Chandeliers for your house at one-third off. Children's clothes, \$8.95 for \$4.98. May I repeat that this goes on every night. This is one edition, the edition of Thursday, November 22.

*By Mr. Fulton:*

Q. I am interested in this, but I want an explanation. Are those large stores or small stores?—A. They are a variety.

Q. A cross section?—A. This happens to be the Robert Simpson Company's, this is Northway's, this is Macdonald and Wilson Light Fixtures, Holt Renfrew's, Sellers Gough, People's Credit Jewellers, Eaton's, Crystal Fur Shop, the Shoe Circle, Fairweather's.

Q. For somebody who does not know Toronto, is that a fair cross section of the stores, large and small, or are they all large stores?—A. They are large and small. I would say preponderantly large.

Mr. CROLL: Yes.

The WITNESS: Mr. Croll would know them.

Mr. THATCHER: I would like an explanation, too. What do these advertisements indicate as far as price maintenance is concerned?

The WITNESS: May I conclude. These are men's neckties, regular \$2.50 to \$5.00, for \$1.69 each. Here is an advertisement of the Canadian Tire Corporation, automobile oil at 37 cents a quart, save \$6.75 on your battery. Men's skates and boots, regular \$18 to \$20, for \$11.45. Here is an advertisement for bathroom fixtures, regular \$219 for \$169, Better Plumbing Company, at 641 Yonge street. Television sets, I won't describe them, every one of these is a bargain. I just brought this as a matter of interest. It does not mean as much, perhaps, but pre-dressed chickens sell at 59 cents a pound and Pickering Farms charge 55 cents. Fresh ducklings at 55 cents a pound, and Pickering Farms, 55 cents.

The point that I wanted to make, sir, is that while we say that there are price maintained merchandise, that I have here is one edition of a Toronto newspaper offering people all the bargains they want.

Mrs. FAIRCLOUGH: But there are no \$2 shirts.

The WITNESS: I do not think there is a \$2 shirt among the lot. Mr. Wilson has drawn my attention to another point which I wanted to make. This is the Canadian Jewellers Year Book. It is a year book giving the lists. In this there are four pages of watch brand names—this is an identification service to help jewellers find the makers of certain watches when they want them. There are in this book pages of names of watches you can purchase in Canada. Somebody at some time or other has them in stock. Out of that list I was able to pull out 62 names of price maintained items, leaving 239 non price maintained, out of a total of 301 watch brands listed. There is no compulsion for the public to buy any one of those 62 watches, they have a choice of 239 others to buy if they want them. If the 62 happen to be the Cadillacs of the jewellery business, the public can buy them at price maintained prices, but they do not have to. There are 239 other watch lines for them to purchase.

*By Mr. Thatcher:*

Q. What about the advertisements? I still have not been told the significance of those.—A. The significance of those advertisements to me is this. The public has those bargains available to them all the time. That is only one edition of a daily newspaper. You can read that in the papers any day of the week, more or less, and I respectfully suggest to you, ladies and gentlemen, that if you abolish resale price maintenance you will see brand names all throughout these ads. I do not think any of these items are loss-leaders, because they are not branded items. It is the brand in my opinion that labels a bargain a loss-leader. Here there are some Eaton brands, some are Simpson's and some of them are what we call buckeye brands, no particular manufacturer is identified with them, and they are given to the retailer with the idea to cut the heart out of them if you want to, but when the manufacturer gives you his brand with his name on it, on which he has maintained the price and the quality, etc., he asks you, the retailer, to maintain the price on that item. The public always has bargain merchandise available, and I suggest to you that if this legislation is implemented that your well known price maintained items would be in the same class as these.

Q. In other words, the prices on these goods would go down.—A. I would suggest . . . do you think it would be so?

Mr. CROLL: Do you think it would be so?

The CHAIRMAN: The understanding was that the witness would make a brief summary of his brief and then the committee counsel would begin questioning him on this brief.



Mr. FULTON: The witness indicated that he wanted to follow that one up.

Hon. Mr. GARSON: I would very much like to cross-examine on this point if everyone else is going to.

Mr. FULTON: The witness indicated in this case that he would like to follow it up, that he wanted to complete his statement.

The CHAIRMAN: The witness may proceed, but will the members in this corner of the room close to the witness refrain from asking questions until they are called.

The WITNESS: We say on page 6, that while some lines are price maintained others are non-price maintained—but that price maintenance holds prices down. On this account I have this statement to make. I know, because I work with jewellers, wholesalers and manufacturers in my work. I know that since the war there has been a constant squeeze on the retailer's mark-up. It has been caused by constant increases in labour charges, a constant increase in the price of materials. Take the matter of a Swiss watch. None of us have any control over the price of a Swiss watch. It is because of customs duties, excise duties, sales tax and the like, that prices have been going up. The manufacturer himself is fearful of pricing himself out of the market or getting away from demand. Believe me, that is the most constant worry of the jewellery trade in Canada that our prices artificially are going to get so high that the public will turn away from our goods. It is a constant worry in the jewellery business. The manufacturer therefore is constantly asking the retailer to take another squeeze, take another squeeze, take another squeeze—that sounds like Wartime Prices and Trade Board days, but that is happening. The retailers of this country are constantly complaining, they stand alone, they can't get their mark-up and if they can't get their mark-up they can't get along on what they are getting. That, unfortunately, I say, is tough. I am talking only about branded merchandise because the retailer sets his own prices on non-branded merchandise.

Now, in the brief, we said a great deal about what we consider democracy in business. Mr. Wilson has already made an allusion to it. If I may just go back and read it, it seems to me it is a valid, strong point of the recommendation:

According to the recommendation of the MacQuarrie Commission, it is recommended that it be an offense for a manufacturer to withhold his stock from a price cutting retailer. We cannot fail to look upon this as an extraordinary proposal and without precedent. Up to the present time, it has been considered to be the democratic right of any business man to sell or refuse to sell according to his decision. It might be that the location of the store which was wrong, the merchant a poor credit risk, too many outlets in the community or the operator slipshod and inefficient, however, it is unthinkable that any Government should even consider legislation which would eliminate such a basic democratic right.

This comment of Mr. Wilson's we thought put the position of the manufacturer particularly well.

I hope I am not exceeding my time, Mr. Chairman?

Hon. MEMBERS: No, no; go on.

The WITNESS: The first concern of the manufacturer is the welfare of the retailer, hoping to keep him in a liquid position. Unfortunately he cannot always be sure, since the retailer is never completely liquid—his money being tied up in inventory and bills receivable. He makes payments to suppliers if he is pressed for such payment, but the individual supplier can never be completely sure as to the retailer's current solvency. The manufacturer could,



by the law you propose, be forced to continue selling to a store which progressively was becoming insolvent.

The WITNESS: We feel this, that the manufacturer might be forced by your law to go on selling to the retailer even when he knows that the retailer is facing insolvency.

Mr. CROLL: No, no; not at all.

The WITNESS: That is what we took to be one of the effects of the proposed legislation.

The CHAIRMAN: Once again, Mr. Croll; would you mind withholding your questions until Mr. Leach has finished his submission?

The WITNESS: I would appreciate having Mr. Croll's view on it. It seems to me that if a firm is facing the receiver there is not much that we can do if he decides to cut prices. He might be cutting prices in desperation as a last resort; facing bankruptcy, and as a fund raising proposition, he may cut prices. That is one fear the manufacturer is faced with. Isn't that the point?

The CHAIRMAN: Mr. Phelan will undoubtedly cover that in his questioning.

The WITNESS: In our brief we say:

According to the Dominion Bureau of Statistics figures, the jewellery trade in the month of September, 1951, showed a decline in sales of 17.6 per cent over September, 1950. The entire decline is not represented by this figure since during the current period prices have sharply increased due to the imposition of added taxes so that this decline might be more properly estimated at 25 per cent to 30 per cent. While this unfavourable trend is evident, the jewellery trade is further threatened with metal scarcities in the period which lies ahead. In many parts of Canada jewellery stores are now operating auction sales and discount sales indicative that our merchants are already suffering a postwar pinch. Should the recommendations of the MacQuarrie Commission be implemented, it can only be concluded that an immediate flurry of price cutting will be generated with chaotic conditions created in this trade and industry.

Now, we end our submission by saying that we urge upon the government the fair trade laws as applied in the United States.

Mr. CROLL: What do you mean by fair trade laws?

The WITNESS: Might I elaborate on that point?

Mr. CROLL: Yes.

The WITNESS: It is simply this, the manufacturer goes before a government bureau known as a fair trade bureau and he registers the catalogue of his merchandise and the price at which it is to be sold to the public. That is openly revealed to the government. He then goes out to the retailer and he says my merchandise has been declared a fair trade item. He shows the retailer the government certificate. The retailer signs a certificate that he will resell at the approved price controlled by the bureau. You will no doubt recall the Macey case last June; that was a case brought about because Macey's had not signed a fair trade agreement. You have probably had reference to that several times before your committee. Shall I drop that, sir?

The CHAIRMAN: We have had it, yes.

The WITNESS: We would say that this fair trade law would do away with much of the present difficulty, and the result would be that the manufacturer would immediately look at his merchandise and price it very closely with better results to himself and the retail trade. We would call it a fair trade law. That is a fair trade law as I understand it, in legislative form.

Before I sit down, there are a few little points that I gleaned over my brief experience in life. You have heard of the T. Eaton Company. I have here, and would like to show to the committee an advertising dodger which that company puts out. These are put into practically every home in the city of Toronto. This is a 16 page bargain sheet and it probably goes into 50,000 or 60,000 Toronto homes; 16 pages of bargains, and they offer these to the public periodically. And practically every day they have 3 or 4 pages of advertising in most of the Toronto newspapers. I merely say this, I would be amazed if the T. Eaton Company favoured price maintenance. I think they have taken a very natural stand. I think this thing represents the fact that the small dealer has neither the resources nor the public confidence or the selling ability to offer this kind of thing to the public. The little man is not in a position to put on that sort of a sales campaign. I can suggest that retail price maintenance was never put on to help such an organization as the T. Eaton Company, it was put on to defend the little man in respect to the ability of the little man to win public confidence.

The CHAIRMAN: You have it pretty well covered in the summary of your brief here. Is there anything more you wish to add?

The WITNESS: I do not think I have much more to add.

The CHAIRMAN: Then Mr. Phelan will lead in questioning and after that the members of the committee may raise their questions. I would suggest now that Mr. Phelan now start on questions.

The WITNESS: Thank you, Mr. Chairman.

*By Mr. Phelan:*

Q. Mr. Leach, I would like to ask you a few questions about your association. In the first paragraph you give information as to the membership in your association?—A. Yes sir.

Q. And you indicate that you have so many members, so many associate members and so many manufacturers; am I to infer that your association is made up of all branches of the trade from manufacturers to retailers?—A. That is right, sir.

Q. Can you tell the committee about what percentage of all retailers in Canada your 1,239 figure represents?—A. Oh, not more than 60 to 75 per cent.

Q. A substantial part?—A. Well I happen to know, for instance, that the jewellery magazine circulated in Canada has 3,400 readers. It will duplicate sometimes—two readers in a store—and I think the manufacturers would guess that of the main, worthwhile accounts, leaving out the little watch repairmen, there might be 2,200 stores in this country.

Q. And as you say you represent about 60 per cent of them?—A. I would say so.

Q. Of the 109 manufacturers what does that represent of the total manufacturers in the dominion?—A. I would probably guess about the same figure—about 60 per cent.

Q. About the same 60 per cent?—A. Yes.

Q. I see. Among your 1,239 retail members do you include those who sell on the instalment plan—credit jewellers?—A. Yes, credit and cash jewellers.

Q. Credit and cash jewellers?—A. We have some departmental stores as well.

Q. In your trade would you have some divisions—gems, watches, jewellery, and silverware?—A. No, as an association we have our manufacturers' section and our wholesalers' section—they operate with a common board of directors—50 per cent of each.

Q. I am speaking only of your retail business. You have classes of business, I suppose—gems, watches—A. No, sir. The store itself is a member. For instance, take Henry Birks and Sons, or Kents, the whole company is the member of the association.

Q. I understand that, but I am asking you if you divide your products, your commodities, into classes such as gems, watches, jewellery, silverware and so on?—A. No, sir.

Q. Tell me this. About what percentage of your total retail output is price maintained?—A. I knew you were going to ask that question and I thought and thought about it. It is a difficult question to answer. We have a unique situation in the jewellery trade. We have Henry Birks and Sons which is the biggest jewellery store organization in the world. I have no access to their figures. We have departmental stores who sell jewellery merchandise, and we have the ordinary, regular, small jewellers. I would say that Henry Birks & Sons they sell very few price maintained goods because their brand name is so prominent. If they put Birks on it that is the standard of quality. They do not make use of brands. Similarly, with the T. Eaton Company brands are not important, because of the prestige of the T. Eaton Company. However, when you get down to the little man out in Brampton, Oakville, or Lethbridge, he has not much prestige.

Mr. CROLL: Kamloops?

Mr. FULTON: They have lots of prestige there.

Hon. Mr. GARSON: Hear, hear.

The WITNESS: They have more price maintained merchandise there as the prestige of the brand is increasingly important. Those dealers have got to sell in competition with Birks, so they hold on to the brand of a watch.

I do not want to name brands here because the newspapers may give somebody free publicity and I would be accused of favouring the wrong person.

The CHAIRMAN: They will not do that.

The WITNESS: There are brands in watches that have public acceptance—which enables the small man to compete with Birks.

*By Mr. Phelan:*

Q. Perhaps you would give me an estimate on the smaller dealers—what percentage of their business is price maintained?—A. In watches, I would suspect it was 90 per cent.

Q. What about silverware?—A. In diamond jewellery, 75 per cent; in silverware 95 per cent probably—and I am thinking of such names as Comunity Plate, 1847 Rogers Brothers, and so on.

Q. Are there any other classes of commodities on which you can give us figures?—A. Well, jewellers sell electric appliances, toasters, mixmasters, and that sort of thing, but again I could not give you any figures.

Q. So we can take it from these figures from Henry Birks at the bottom, to the smallest man at the top, they would run anywhere from a small percentage to 90 per cent or 95 per cent?—A. I would say so, sir.

Q. Have you any idea how the manufacturer fixes his prices? Of the basis upon which he fixes them?—A. Well no, not precisely. All manufacturers, it seems to me, work to what they call psychological prices.

Q. Psychological?—A. If they want to sell something at \$50 or \$29.50, \$79.50, \$200, or \$1,000, they make a product to sell at that price. I think that is the common procedure, is it not? You might find a store that has a \$2 table. They go around to the manufacturers and say: Get me something that I can put on my \$2 table. Eventually that gets into the catalogue as a standard brand. I really feel that is the way that most pricing is done.

I see that you are nodding, Mr. Hees, and I think that is the common trade practice.



Mr. HEES: Yes.

The WITNESS: A hosiery manufacturer wants to make a pair of socks to retail for \$1. It would be silly to make a pair to retail at \$1.33 because that is not the price at which the public buys. The price is \$1, \$1.25, \$1.50, and \$2.

Mr. PHELAN: May I take this statement from the MacQuarrie committee report to be substantially correct?

Mr. FULTON: What page?

*By Mr. Phelan:*

Q. Page 19 at about the middle of the first third of the page. This is a quotation apparently from some manufacturer.

The answer, I am afraid, is that, lacking any very scientific approach, he (the manufacturer) does it by a process of trial and error. The retail price obviously has to be a compromise and since it is considered safer to put it a little too high than a little too low, it is usually a compromise on the high side.

Would that be a fair definition of the manufacturer's approach to fixing his price?—A. I would be inclined to say not—except it should be modified by stating that he must look to what his competitors are doing. If the competitor has a line of socks at \$1.75 or a watch at \$29.50 which the trade recognizes as good value, he would be awfully foolish to put his price at \$3 or \$40—in comparison with the going price.

Might I say that these ads in the newspapers have a great deal to do with the setting of prices.

I would say that any manufacturer selling chandeliers, looking over that copy of the *Daily Star*, would say: I have certainly got to have chandeliers for less than that or I am not going to sell them.

Q. Are you telling me or telling the committee that the advertisements to which you have referred deal with non-price maintained articles?—A. Yes, those are all non-price maintained as far as my knowledge takes me.

Q. So, in the field of non-price maintained goods the public is getting a great deal of benefit from competition, in the matter of prices—that would be correct?—A. Yes, I think that is a correct assumption.

Q. But in the price maintained field the price is set by the manufacturer and there is no competition that affects prices?—A. He must compete with these prices, or he could not sell his merchandise. How can he live, faced with that kind of competition—if his prices were not competitive or reasonably so?

I cannot tell you in exact dollars and cents what the comparisons are but I say any manufacturer must be prepared to meet these prices or go out of business.

Q. Would I have this as a correct conclusion from reading your brief—that the manufacturer by advertising and by establishing resale price maintenance can establish, thereby, public confidence in his products?—A. That is the intention, sir.

Q. Is that the result?—A. That is the result, yes. Any advertising that is done is calculated to win public approval—whether it is a can of soup or an automobile.

Q. Do you think that all manufacturers desire public confidence in their products?—A. Yes, sir.

Q. Then why do not all manufacturers adopt resale price maintenance?—A. Well, this is a very old story in the trade. There are people who have grown to the point where they have a stake in the industry, where they have a payroll of two or three hundred employees perhaps who have to be paid every Saturday. They have developed a price that the public will pay, that gives the

retailer a reasonable price, and it is a proper price for the manufacturer himself. The other manufacturer, frequently has to live only on his ability to undersell the first man by cheapening in every way that he can.

Shall we say that it would be difficult for a little man to come in and compete with Ford Motor Company or General Motors and, if he started out to make a car now, about his only inducement would be to make it cheaper. That has actually been the story of business.

In my experience in twenty years, I have seen, many, many small outfits selling "price" only but, as they grow up and get a stake in the industry and become something, they want to advertise and tell the public more about themselves and they go in for price maintenance.

Q. So the tendency of the manufacturer who has as his goal public confidence, is toward resale price maintenance?—A. Ultimately, I would say that is a fact.

Q. Well how would you explain the case of such large nationally known producers as Proctor & Gamble—who I understand decline to follow the practice of price maintenance. How would you explain their analysis of the buying field?—A. Proctor & Gamble I think have made such a name for themselves by advertising that the public will demand their merchandise.

Q. Is that not what you say the manufacturer of the price maintained article seeks—to obtain public confidence so they will demand his goods?—A. That is right.

Q. How do Procter & Gamble get it without price maintenance?—A. I guess I cannot answer that story.

Q. All right, sir. Another thing that is of interest to me and it may be of interest to the committee is this: you told me that certain of your retail dealers sell on the instalment purchase plan?—A. Yes.

Q. Let us assume that two purchasers at the same moment walked into a credit jewellery store; A went in to buy an article for cash, while B went in to buy some article on the instalment plan. That article is price maintained, so that A and B will pay the same price for it. Now, in the sale to B the retailer has to assume the carrying charges. How do you justify a system which prevents the retailer from giving to the cash purchaser A, some, at least, of the benefit which he derives in not having to pay the carrying charges? How do you justify that system?—A. That is a very interesting point. We have, of course, both cash retailers in the jewellery trade as well as men who call themselves credit jewellers. To be frank about it, I think the public when they want to buy on credit will go into a credit jewellery store, that is, if they want convenient terms. But if people want to pay a low cash price, I suppose they would go out and buy from the people who advertise bargains.

If you discuss the matter with a credit retailer, he will say it is simply a service to the public. For example, some stores give delivery. Did you ever question the cost of running vehicles all over the city in order to give people delivery? Or did you ever question the cost of running escalators and installing women's powder rooms and all the other costs of running an ordinary store?

The credit store says we do not have an elevator or a door man, and we do not give deliveries. So this is our service to the public, our way of competing against the other enormous competition. We give credit at cash prices. That is the argument that he will make, that it is a service to the public.

Q. Well let me put a different proposition to you. Suppose a cash buyer and a credit buyer both go into the same store at the same time. How do you justify a system which ties the hands of the retailer and prevents that retailer from passing on some of those service charges to the cash customer? Do you justify that system?—A. No, I do not and I do not think any retailer in the country would. I think when a customer goes into a store, the retailer

will make his own arrangements with him; and if the customer says: "I want my cash discount," I think the average retailer would give it to him and not turn him away.

The CHAIRMAN: It occurs to me: how would he do that in the case of price maintained goods? How would he give this cash discount?

The WITNESS: This price maintenance theory is a funny thing. Consider the chap who wishes to turn in his automobile and buy a new one. Suppose there is a Ford car selling for \$2,300. The prospective purchaser will shop around and he will find variations running into \$200 or \$300 in the valuation placed upon his used car.

The CHAIRMAN: I think that was made clear to us by another witness.

The WITNESS: I think that is true. You have all kinds of deals in cars.

*By Hon. Mr. Garson:*

Q. But is it true of the jewellery business?—A. Yes. You have seen annual trade-in watch sales advertised. The manufacturers will agree that you should put on a bit of promotion because things are a little quiet. And they will say: "With our consent, go on and have a sale in watches and give a nice liberal trade-in allowance." But it would vary from store to store.

Hon. Mr. BEAUBIEN (Co-chairman): But that does not answer the question. You have price maintained goods. Consider this watch on my wrist—say it cost \$26.—A. Yes.

Q. I am a retailer and somebody comes into my store to buy a watch, and the price is set at \$26. The next person comes along and demands a discount for cash. What would you do?—A. If you were my cash customer and you said: "I want my 6 per cent cash discount," I would say that as a retailer I would be terribly stupid if I did not give it to you in spite of price maintenance. The only harm in price cutting is in the advertising of it. A man may give a liberal trade-in allowance. There is no manufacturer's scout present to find out how I operate my business. I think that the harm is done when I advertise, let us say, a 15 per cent discount.

*By Mr. Phelan:*

Q. I suggest that when you follow that practice, you as a retailer have abolished price maintenance yourself.—A. Perhaps that is true. It is not a rigid thing. Nobody is standing behind the retailer to learn whether or not he gives a 6 per cent cash discount.

Q. Why not give a 60 per cent discount then?—A. It would be a little more difficult for the retailer to finance it.

Mr. HEES: Yes, and stay in business.

The WITNESS: Yes, and stay in business.

*By Mr. Phelan:*

Q. You have expressed the fear, if I understand your brief, that the abolition of resale price maintenance would affect the independent dealer by driving him out of business.—A. I think that language is a little strong. We have a fear, that it will cause chaos in the jewellery trade.

Q. Let me give you some figures from the Dominion Bureau of Statistics. In view of what you told me about price maintenance in the retail jewellery field, it might not be unfair to compare it with the grocery business wherein we were told that price maintenance was less than 1 per cent.

The department gave a division of the total sales between independent stores and chain stores, in 1930, 1941, and 1950. And in the jewellery business,



where the price maintenance practice is observed, we have this record: In 1930, the independents had 76.8 per cent of the entire national volume of business, while the chains had 23.2 per cent. In 1941, the independents had only 70.8 per cent while the chains had 39.2 per cent. In 1950 the independents had only 61.1 per cent while the chains had 38.9 per cent. So, in those twenty years, the chains had lost 15.7 per cent in volume in a business which is largely price maintained.

Let me give you the experience of the grocery business where there is no price maintenance. In 1931, the independents had 70.6 per cent while the chains had 29.4. In 1941, the independents had 69.6 per cent while the chains had 30.4 per cent. In 1950 the independents had 64.2 per cent while the chains had 35.8 per cent. So in that business, with a very small volume of price maintained articles, the independents only lost 6.4 per cent of volume, as compared with 15.7 per cent of volume in the jewellery business. Would you like to comment on those figures?—A. I question, very much, if I could.

Q. All right, sir.—A. I think probably that in the jewellery trade the independent stores have increased greatly in number since the war because we have trained a pile of watch makers who have gone out and started businesses all over the country. They may be getting a bigger ratio of business because there have not been as many chain credits. And they developed a certain volume, but perhaps cannot go too far beyond it. But in the meantime they may have opened 10 or 15 per cent more stores.

Q. Does it not strike you as significant that when we have those two types of businesses with their relative volume of resale price maintenance, that the jewellery business has lost  $2\frac{1}{2}$  times the amount of business that the grocery business has lost?—A. I do not think that I can evaluate your figures.

Mr. HEES: Mr. Chairman, could we not start with the questioning by members of the committee? This is all very interesting, if we had lots of time.

The CHAIRMAN: The members of the committee who were taking such an active part at the first of the discussion today might perhaps pay the penalty for it now.

Mr. PHELAN: It is always a matter of embarrassment to me, Mr. Chairman, in asking my questions, because I feel that I am trespassing on the time of the members. May I ask just one more question?

Hon. Mr. GARSON: How many more questions have you got, Mr. Phelan?

Mr. PHELAN: I have only one question more.

*By Mr. Phelan:*

Q. What position do you think the retailer should occupy in a community? Should he be the counsellor of the buyer, and the custodian of the buyer's interests, or merely a distributor for the manufacturer?—A. I am not going to answer that question. I think the jeweller is in business for himself and he wants to make some money. He has to pay his bills. He has to pay his manufacturers or wholesalers, otherwise he won't be in business for very long. He is there to serve the public. That is true, but he is also there to make some money.

Q. I appreciate that, but I am asking you about the service that the buying public may reasonably expect to receive from him. And I notice on page 3 of your brief you emphasize the fact that the public does not have much knowledge of the articles you deal in, and that expert advice is important for them.—A. That is correct.

Q. And that is a service which the retailer gives and charges for?—A. Yes.

Q. You say that is the service for which he charges and it ought to be extended over all lines of business? Let me comment on this point by referring to a publication of the American Fair Trade Council. I do not suppose it is prejudiced against resale price maintenance?—A. Not especially, no.

Q. I would like to read a paragraph from a journal called "A Fair Trade Manual for Management":

Today a sale of branded goods, as distinguished from the old sale in bulk, is essentially a transaction between two principals—the manufacturer and the consumer. The manufacturer himself succeeds in doing a large part of the selling. He packs his goods, determines, standardizes, vouches for, and is legally responsible for, their quality, and he advertises them in competition with similar goods of competing manufacturers.

Now, would you agree with that conclusion?—A. I have read this fair trade literature and I agree that that is the sort of thing they write. To get down to actual business it isn't quite as open and shut as it is pointed out to be. In the final analysis the little merchant is just as important in the transaction.

*By Mr. Shaw:*

Q. Mr. Leach, you are general manager of the Canadian Jewellers' Association?—A. Yes, sir.

Q. In your capacity as general manager you travel extensively?—A. Yes, I have.

Q. You are quite familiar, therefore, with the various watch manufacturing concerns in Canada?—A. There is only one manufacturer in Canada and that is the Western Clock Company in Peterborough and all the rest are imported.

Q. Let me include the companies which make watches available to retailers; you are fairly familiar with the operation of those companies?—A. As familiar as anyone in my position can be.

Q. Are you aware of any case where a so-called manufacturer or distributor demands the signing of a contract by the retailer before he can handle his product?—A. I do not think there are any in the watch business. There are cases where there are franchises, there is a pen company and one of the silverware companies.

Q. I am not going to mention the company, and I do not think I should mention a very well known product.

Mr. CROLL: He is not talking about franchises.

The WITNESS: I was thinking the terms were synonymous.

*By Mr. Shaw:*

Q. Do you know of any case where a retailer must sign a contract with the distributor or manufacturer under which he guarantees to sell a product at less than list price?—A. No, sir.

Q. Then I have this letter from a man who has been a retail jeweller for some thirty years and he says: "If you handle their watches you have to sign a contract that you will not at any time sell their watches at a discount. I have been a dealer of theirs for some years and at present have a large stock—" You are not familiar with any such contract?—A. No, I am not, sir. I know the agreement is in existence but I took it for granted it was verbal.

Q. There may be such an agreement?—A. There may be, yes.

Q. This dealer then says, "Consequently over these years we collect watches that are not selling just because of the model of them. We cannot discount them to move them, yet we have to hold them forever as far as they are concerned. If I sold one of these watches at a discount and they heard about it, I would not be able to get any more of their merchandise." You are not familiar with that?—A. I think you have said enough to indicate to me the company you and I are both thinking about.



Q. I don't mind mentioning it.—A. This company is the biggest dealer who has this idea of a trade-in watch sale, and it is their way of giving the public a good substantial discount, if he gets in a lot of shelf warmers he cannot get rid of.

Q. This retailer claims he has older models on hand he cannot dispose of because he cannot cut the price.—A. I do not agree with his statement.

Q. Are you familiar with the financial arrangements that exist between the retailer and supplier of watches? Is it a general thing he pays cash?—A. No, he sure doesn't, that is one of the points with which I was going to take issue in the MacQuarrie report. The MacQuarrie Committee says the manufacturer has no interest in the retail store and I say he has an overwhelming interest. He encourages the retailer and says, "You can sell a \$75 watch for \$7 a month and not hurt yourself." He says to get in the credit business that is the way to do business and if you sell to the public on terms of ten months we will give you ten months' terms.

Q. This man says, "In fact, I plan right now putting on a sale this December to move merchandise that should have been moving this past summer, but owing to the money situation it did not move. Therefore, I am forced by the creditors to move it now or ask them to carry me for a longer time, and they cannot because of the new credit situation which the government put on last spring." Now, by creditors would he mean the supplier?—A. I would say so.

Q. He says, "Therefore, I am forced by the creditors to move it now or ask them to carry me for a longer time and they cannot because of the new credit situation which the government put on last spring. From this the banks closed down on their credit and they cannot finance as they would have otherwise. Because they have to pay this 35 per cent tax in thirty days, and you can see that this would amount to a considerable amount to them. Therefore, they cannot carry us retailers as they would otherwise do. You can see that this goes right down the line." Now, he has told me personally the supplier is putting the screws on him and forcing him to pay at the other end.—A. Mr. Shaw, I think your correspondent is a very honest man, and I hear the same thing every day.

Q. I appreciate the fact that probably the pressure is being put on the supplier, but at the same time if the supplier is putting the screws on him as far as getting the resale price is concerned, they are making it doubly impossible for the retailer.—A. I agree. I imagine if you scratch that man deep enough you will find he is a believer in price maintenance.

Q. Just a direct question now. If faced with bankruptcy or a situation where he would cut his own profits, not the supplier's do you not think he should be allowed to reduce his own margin of profit to stay in business?—A. Certainly, in ordinary common sense. It is being done every day. Fellows who are in a tight spot are cutting prices and the manufacturers have to wink at it. "What can I do about it," they say, "the guy is stuck. He has to get something out of it."

Q. But if he is under contract there is danger of him losing the agency if he does that very thing—A. I would agree, sir, but I do not think the manufacturer is going to lose too many of his customers. He is going to get them back later on, anyhow.

*By Mr. Fulton:*

Q. Does it not follow from what you have just said to Mr. Shaw—and I put this question down—you were giving evidence earlier with regard to discounts: Does it not follow that your argument is, in effect, that price maintenance while desirable in principle and producing desirable results when followed, is departed from as and when necessary, now, without a law, without any law?—



A. Without any sanction, that is correct, yes. I know that that is happening. I know the manufacturer wrings his hands impatiently and says "It is an awful situation right now in the jewellery trade of Canada, the price wars are breaking out all over in desperation".

Q. Would your argument follow along from there that if this can be done if, as and when necessary without any law making price maintenance illegal, is there any necessity for such a law? Would your argument follow along that line?—A. Precisely, sir. The public now has the choice of what it wants to buy and when a retailer gets into straitened circumstances, he has a right to put on a reduction sale, and he does.

Hon. Mr. BEAUBIEN (*Joint Chairman*): Then, why have price maintenance?

The WITNESS: Well, it is a nice orderly way to do business. It is much preferable. Every class of trade was happier in this country when people had money to spend, taxes were small, and the public were buying freely. We are now in an emergency.

The CHAIRMAN: Taxes were higher in the jewellery business five years ago.

The WITNESS: Well, they were applied differently. At that time the purchaser financed the purchase tax. Now, unfortunately, it is in our inventory and we owe the government 35 per cent of our capital every month.

The CHAIRMAN: You still have the sales tax as well. It is quite true. Your point is that the retailer or manufacturer did not have to finance the tax.

The WITNESS: That is the point. Previously it was an established custom that had gone on for a hundred years in this business, a retailer to make up a few displays in a counter has to buy a lot of high value merchandise. He has to spend \$20,000 in order to dress his store. He is generally a little man, and in order to help him out some wholesaler or manufacturer gives him a hand-out, telling him to put the line in "and pay me as you go along". That is a tradition in the jewellery trade. The banker is the manufacturer and the wholesaler. Now the banker is owing the government 35 per cent of his capital.

Mr. FULTON: You mean, the manufacturer is the banker of the jeweller?

The WITNESS: Of the retailer.

Mrs. FAIRCLOUGH: Should you not have said the manufacturer and the wholesaler are the bankers of the retailer?

The WITNESS: Yes. That is an established think that has gone on for several generations, and here we are suddenly faced with a 35 per cent loss of capital in the jewellery trade, and it is hurting the jewellery business.

The CHAIRMAN: Family allowances, old age pensions, disability pensions.

*By Mr. Fulton:*

Q. Let us go back to the line we were following a moment ago: if and when necessary price maintenance is departed from under a pressing situation without the necessity for any law. Following on from there, would you agree with the statement that to pass a law is hardly an answer to the situation, which appears to be worrying many people, that is, the situation of high prices, to pass a law is not the answer to that situation.—A. I do not believe any person is forced to buy a Cadillac car, and if a Cadillac is price maintained merchandise, there are lots of Austins, Chevrolets and Fords around.

Q. You have given us examples of cases where even price maintained goods, so called, are made available at less than the price maintained goods without the necessity of any law being passed.—A. I would say so.

The CHAIRMAN: This is your last question, Mr. Fulton.

Mr. FULTON: You have had a lot of my time, Mr. Chairman.

The CHAIRMAN: Thirty seconds.

Hon. Mr. BEAUBIEN (*Joint Chairman*): I had about one second.

*By Mr. Fulton:*

Q. I want to ask you one question with regard to the MacQuarrie report. I understood you to say that the MacQuarrie Committee did not ask you anything subsequent to the letter you read.—A. No, sir, but I would look upon it as my own oversight. I should have been advised by counsel, or had a parliamentary agent or someone inform us.

Q. I am not trying to get at the blame.—A. I do not want to blame the MacQuarrie Committee. I merely said that had we recognized that resale price maintenance was going to be the paramount consideration of the MacQuarrie Committee, this is information, today, what I would have presented to them.

Q. Do you know from your own knowledge of any other individuals or organizations who made representations to the MacQuarrie Committee, who were in the same position as you were, and made the same type of submission with the same results?—A. I do not know.

Q. Of your own knowledge?—A. No—perhaps I should say—no, I don't know.

The CHAIRMAN: Thank you Mr. Fulton.

*By Mr. Hees:*

Q. Mr. Chairman, first of all, before I put any questions; I said some hard things yesterday but I would like to take this opportunity of congratulating Mr. Phelan on the very fine way he put questions to the witness today.

Mr. PHELAN: Thank you.

Q. Mr. Leach, you spoke about the fair trade law in the United States; would you be good enough, if you can, to outline to us what it is, how it works in the United States, and so on?—A. To the best of my knowledge, as I think I did explain earlier—I will try to be as brief as I can—the manufacturer submits his catalogue of prices to the state fair trade board, whatever it is called; that board approves of those prices if they feel they are right and then it issues a certificate and puts it O.K. on it and says that is your price. You will go to the retailer and he signs a contract that he will sell at that price. There will be fair trade, bearing in mind my friends, that when that man agrees to a fair trade price he bases it on his catalogue of prices; for instance, he recommends that his product, whatever it happens to be, the item is going to sell at 79 cents. When he does that he is sticking his neck out because he has got to sell it, or agree to have it sold, at 79 cents. A competitor may come along tomorrow and say, my price is going to be 60 cents; but his commitment to the retailer is that he will sell at 79 cents and he would suffer if they cut the price to under 79 cents. I respectfully suggest that before he goes before the fair trade office and says my brand is going to be 79 cents he has got to be awfully sure it is as low as he can possibly make it because somebody else may make it lower.

Q. Now, in the United States, does that eliminate the question of the loss-leader? I take it it does.—A. In cases where the retailer actually signs. Most of the trouble with Macey's was that Macey's would not sign this certificate and the result of that was that their supply of merchandise was tied up. I understand that since then they have signed the certificate and are again getting the merchandise, getting the goods.

Q. But here in Canada do you think this would be an effective answer to the threat of the loss-leader?—A. Most effective.

Q. How does it work out in the United States in that respect? Can you tell us something about that from your own knowledge?—A. All I could give you is hearsay, what I read about it in the trade papers and what I hear about



it in the jewellers' conventions. I think it is very well liked by the established trade in the United States; but in a case like Macey's, I am not so sure that they are going to be so very happy over it.

Q. But you think it would be practicable for this country?—A. I think it would be.

Hon. Mr. BEAUBIEN: Are Macey's coming into line with respect to this fair trade policy?

The WITNES: I do not know whether it is going to get them yet, or not.

Hon. Mr. BEAUBIEN: I seem to recall having read in the newspaper something to the effect that they were going to sign.

The WITNESS: I believe that is right.

*By Mr. Hees:*

Q. As a businessman do you see any difficulties at all in instituting a fair trade law of this kind in Canada?—A. I cannot, sir. I do not see any.

Q. I take it that you are amazed that the government has not followed this and made it apply to your own situation?—A. I would say this, that trade circles in Toronto never have been faced with a price cutting crisis. We did not think that they would ever exist in Canada. But we are going to come down here someday, I do not know how soon; we are going to come down here and approach the government and request a fair trade law, regardless of what steps this committee see fit to take. We feel as Canadian tradesmen that we will have to make our views known on that point.

Hon. Mr. BEAUBIEN: I hope that you will excuse me, Mr. Hees, for having taken up a certain amount of your time.

Mr. HEES: It was a pleasure, sir.

*By Mr. Croll:*

Q. If I remember what you said it was that over a period of some years the retailer in the jewellery business had obtained an increase in his share of the value of the articles. Would you relate that to some figures?—A. I don't think I said that, Mr. Croll. What was the question, again?

Q. That over a period of time the retailer had received a larger percentage.—A. No. I said, smaller.

Q. Did you say smaller?—A. Yes. During the war years because of the increasing costs of labour, taxation; the increase in the cost of gold and silver, the increase in the cost of labour all of which we have been forced to take since then and the mark-up has remained the same.

Q. Can you relate that, give us some figures?—A. No, I am sorry, I cannot. But it is a common trade fact, that they are not getting as much profit as we should be getting.

Q. I was interested, you said something in your remarks about democracy in business.—A. Yes.

Q. Then you told Mr. Shaw that you knew of the existence of contracts signed by retailers.—A. Yes, sir.

Q. —retailers agreeing to sell an article at a fixed price; is that correct?—A. That is right.

Q. How can you justify democracy in business and private law?—A. I do not think I would call that private law. It is a contract between the supplier and the retailer. The retailer is not forced to sign. He has the right to buy the merchandise or not, as he pleases. The manufacturer's salesman goes into the store and says to the retailer: I have this line of goods, this is our price, this is our contract with you to handle this line. The retailer can take it or not, just as he wishes. If he signs a contract, a contract with a company; it is a contract



involving certain obligations; and then, if he lowers the price he has broken a contract. But he does not have to sign it.

Q. You think then that the jeweller who is there and is prepared to buy the article and buy it under the conditions that the manufacturer has set is bound to sell it subject to those conditions?—A. Yes. If he signs a contract he would be a pretty poor character to break it.

Q. And if he didn't sign a contract?—A. Well, it would depend on either the manufacturer or the salesman for the manufacturer; if he puts in this line of watches and rings and agrees to sell them at a price, that is his contract and he would be expected to sell them at the agreed price.

Q. And, if he does not?—A. Then I say—the manufacturer has always said in the past—if you don't want to sell it at those prices there are no hard feelings. All I want is my goods back because it is my brand, my trade-mark, my good will; you are not forced to keep them here, let me have my goods back, I will clear them out of your store. That is the offer always made.

Q. An offer you consider to be free trade?—A. Yes, sir, because there is a variety of other lines that he can put in any time he wants.

The CHAIRMAN: Thank you, Mr. Croll.

Hon. Mr. GARSON: First, may I congratulate you upon your candor. I think you have been a exceedingly candid witness.

Some Hon. MEMBERS: Hear, hear.

The WITNESS: That is very kind of you, sir.

*By Hon. Mr. Garson:*

Q. Mr. Leach, you told us that watches were 90 per cent price maintained, diamonds 75 per cent— —A. May I qualify that, sir, by saying I referred to the small stores. I eliminated the big companies with the prestige of their own. It is the little fellow who has no prestige to whom I referred as depending upon the brand.

Q. Yes, and you also told us the great bulk of watches, I suppose more than 90 per cent, were imported?—A. Yes, sir, they are all imported. We just case watches in Canada. They are either Swiss or American production.

Q. What percentage of diamonds would be imported?—A. I was going to say that all diamonds are cut in Europe but, there again, there is one small diamond cutting industry in Toronto, which employs about ten men.

Q. They are probably all imported?—A. Yes.

Q. What is the percentage for silver?—A. Silverware is very largely made here. We import some lines of English silverware—bowls, dishes, entree dishes, trays, and so on, but it is very largely made in Canada.

Q. In the case of the watches and diamonds imported, those are handled in Canada by Canadian subsidiaries of European concerns, are they?—A. In some instances but I would say in as many instances they are handled by local Canadian jobbers.

May I, for the record, name those—although I do not want to give these people a lot of free publicity.

Q. You do not need to do so for my purposes?—A. If I can help I would. There are a lot of familiar names that you know of.

Q. Now, these watches and diamonds that come in here are handled by Canadian subsidiaries of European companies or by Canadian jobbers, who in some cases perhaps buy them in Europe?—A. The jewellery is made here. The diamonds are imported loose and the Canadian jewellery shops make the mounts to put the diamonds in. In the case of the watch movements they come from Switzerland but sometimes they vary the cases; they put them in Canadian cases. To get a variety in your line you buy cases of various sorts.

Q. These selling concerns, either the subsidiaries or the Canadians themselves, are the ones who fix the prices on watches and diamonds—the products that go into the Canadian trade?—A. Yes, sir.

Q. What is the mark-up on watches? The retail mark-up?—A. Well, that is a hard question to answer. I knew you were going to ask it and I have made a lot of inquiries but it fluctuates so badly.

Q. It would fluctuate from a minimum of how much to a maximum of how much?—A. I would say some watches are sold at 10 per cent mark-up, and some at 60 per cent.

Q. 10 per cent—that is in all cases on selling price?—A. Yes, as a percentage of selling price.

Q. In some cases 60 per cent?—A. In the old days jewellers used to think the mark-up on watches was a pretty satisfactory thing because he had so much service to do on it. If you buy a watch and keep it in stock for six months you have to put it in the repair department, clean it, re-oil it—because the oil dries up. Having bought the thing you have got to service it and, before the public gets it you have to adjust it two or three times. The repair department might have to be called in two or three times before the public says: You have got a nice watch.

There has always been a fair mark-up on watches.

Q. What percentage of the watch business would be handled in Canada by Canadian subsidiaries of European concerns?—A. I cannot answer that. The European figure is very, very small. Two or three firms have European connections but I would think they are Canadian in the first place.

Q. You understand what I mean by Canadian subsidiaries? I mean a Canadian corporation with substantial ownership which is not Canadian?—A. I do not know of any in that capacity at all. There are some American firms—Elgin and Bulova—who are American subsidiaries. Then, from Europe there are selling agents operating under a certain name. Take the firm in Quebec—the Hatch Company—they are the agents of Omega, but Hatch is a wholly owned Canadian company situated in Quebec City.

There is the Tavannes Corporation in Montreal, the Longines-Wittneauer Company whose head office is in the United States—but they are not all parallel by any means. Then, there are the jobbers who sell general lines. Take a firm like the Goldsmith Company. They have silver, watches, and jewellery and they are the Waltham and Hamilton agents. They are the sole distributors of the Hamilton watch but it is a wholly owned Canadian company.

The CHAIRMAN: Your last question, Mr. Garson.

Hon. Mr. GARSON: I am finished, thank you.

The CHAIRMAN: Mr. Harrison?

*By Mr. Harrison:*

Q. Many of the questions I was going to ask have already been asked by other members of the committee so I will not waste time going into those. However, I think you stated during your first talk to us that it was a bad time to take price maintenance away. Can I conclude from that that there may be some time more propitious for that to be done?—A. That is a logical conclusion but I do not think there is any propitious time. I think with the condition that the retailers are in it would be an invitation for the “doggondest” price cutting war we ever had in our lives. I am being critical now, but that is my opinion of the case.

Q. Another comment you made was that ultimately everything would be price maintained. That is what I gathered?—A. I hope I did not say that.

Q. That is what I gathered?—A. I sincerely hope I did not say that because that is not my concept of the thing anyway. As long as there are 25 pages of ads in the *Star* every night I do not think we need worry too much.

Q. You do not contemplate that we will get to that situation where everything will be price maintained?—A. I think not.

Q. I have had a question handed to me here and I hope I can read it correctly. I am informed that in the United States where resale price maintenance prevails it is not part of the practice that the manufacturer registers his certificates of price with a government authority?

The CHAIRMAN: There is the division bell and I have one question.

Mr. FULTON: Let us have the answer to that question.

Mr. CROLL: Did you answer that?

The CHAIRMAN: Mr. Phelan has made the observation to me that to his knowledge nowhere in the United States does a manufacturer have to register with a government bureau. The price must be public knowledge?

The WITNESS: Yes, public knowledge by having it handed to the fair trade council, or whatever they call it.

*By the Chairman:*

Q. My last question is that you commented on the fact that consumer credit—and I am not, shall I say sensitive, but I am a little associated with taxes and consumer credit—but you said that restriction of consumer credit was one of the reasons which forced your little jewellers to give more cash discounts and more generous trade-ins?—A. I hope I did not say that.

Q. When you mentioned taxes and consumer credit I gathered that they had forced manufacturers to cut prices?—A. I am afraid I cannot answer you back on that. My mind is a blank on that point.

The CHAIRMAN: We shall not come back now so I will extend the thanks of the committee to the witnesses.

We will meet again tomorrow morning at 10.30.

The meeting adjourned.



## APPENDIX A

## A SUBMISSION BY THE CANADIAN JEWELLERS ASSOCIATION

to the

JOINT COMMITTEE OF THE SENATE AND THE HOUSE OF COMMONS  
TO STUDY COMBINES LEGISLATION

November 1951

Canadian Jewellers Association,  
73 Richmond Street, West,  
Toronto, Ontario.

1. The Canadian Jewellers Association—An Incorporation representing the interests of the Canadian jewellery trade, composed of 1239 retail store members, 71 associates, 109 manufacturers, 130 wholesalers, with a total membership of 1762, Founded in 1918—Incorporated in 1921.

## INTRODUCTION

2. The Canadian Jewellers Association took advantage of the original opportunity presented to make a submission to the Commission headed by Justice J. H. MacQuarrie in 1950, at which time, this Association recorded its disapproval of any business operation which might be classified as a monopoly or combine in restraint of trade, but voiced its conviction that each individual manufacturer should be permitted to retain the right to protect his goodwill and market through his advertised price to the buying public.

We now welcome the privilege of advancing further arguments designed to support the principle of resale price maintenance as a basic right of the individual manufacturer.

*Price Control vs. Non-Price Control*

3. In the jewellery trade as with many other lines of business, the buying public is offered both price controlled merchandise and non-price controlled merchandise. There are brands of watches on which the manufacturer sets the resale price, but there are many other brands of watches on the market where the manufacturer is not concerned about the retail price and where the retailer creates his own selling price.

Similarly, while we have brands of jewellery on which the price is maintained, it is also a fact that the majority of jewellery sold has no manufacturer's resale price and in this connection, the retailer puts on his own price. Some quality controlled lines of silverware have the resale prices established, but equally, there are other silverware lines which have a retailer's price.

We do not feel that the point has been well established that there is no compulsion for the consumer to purchase price maintained items since there is a wide range of merchandise available where the retailer sets his own price. As an Association we have publicly condemned monopolistic practices and there is ample evidence that there is a sufficiently wide range of products available to the public that they need never deal in merchandise where a resale price is required.

*Price Control is Quality Control*

4. While the interim report of the MacQuarrie Commission on Anti-Combine Legislation contended that resale price maintenance was not in the public

interest, little consideration was given to the actual benefits arising from such price maintenance among the foremost of which is quality control. It must be known to all business men and the buying public that substandard goods are constantly being offered "at a price". It is an established principle of business that where price is advertised and maintained, quality is similarly advertised and maintained.

The principles of quality stability and brand identification are singularly important in the jewellery business since so much of our merchandise must be sold on public confidence. We recognize that we sell merchandise or goods of high intrinsic value made of precious metals and gems about which the public has only a cursory knowledge. Prestige of the manufacturer and his adherence to known quality standards is the strength of the jewellery business. The manufacturer's brand and his published price is essential to the Canadian public if they are to buy jewellery store merchandise with any degree of confidence.

Manufacturers must protect goodwill in any line of business and especially the jewellery, watch and silverware trade where it must be admitted, the public is lacking in knowledge of timekeeping mechanism, precious metals and gem stones and where the brand and price must continue to be of importance.

The manufacturer must see to it that he is not "priced out of the market" by too high a selling price or that public approval is lost through cut-throat and unethical business competition. By resale price maintenance, he gives the buyer an insurance that regardless of the source of his purchase, he is buying at the same price as the merchandise will be sold elsewhere. This creates goodwill for the brand.

#### *Loss Leaders*

5. While the report of Mr. Justice MacQuarrie condemned the use of loss leaders describing them as monopolistic devices, it is apparent that the full impact of loss leaders was not in any appreciable degree brought forward by the MacQuarrie Commission. Statements in the press and in Parliament have indicated that some business men are now being concerned over the impact of such loss leaders. We must respectfully draw attention to the fact that only by a manufacturer's resale price can such loss leaders be avoided.

While we recognize that the MacQuarrie Commission report may have reached certain academic conclusions, we must point out that the realistic business man is very well acquainted with the consequences of retail competition in setting prices.

It should be known and understood that it is an established business practice to grant special quantity discounts to large purchasers. This places a dollars and cents advantage in the hands of the chain or department stores or other large quantity buyers. Should a policy of price maintenance not be in operation, it would be possible for the large buyer to consistently and constantly sell at a lower price than his small independent competitor, yet retain a margin of profit not available to the small buyer.

In the J. H. MacQuarrie interim report the view was held that price maintenance was a protection to the inefficient since some outlets would logically sell for less than the average. It is our considered opinion that this represents fallacious thinking and not based on any rational view of business procedure and practice. This view does not take into account factors of business location, accessibility of the retailer to his source of supply, nor the convenience of the shopping public. In the MacQuarrie Commission interim report it was stated that resale price maintenance was designed to take care of inefficient operators. We respectfully submit that this is a mistaken impression since inefficient operators end up in bankruptcy courts. We speak for

more than 1,200 small jewellers located in all parts of Canada and who within the limits of location and supply, we claim, are efficient. The manufacturer sets his price to win maximum consumer patronage and to secure volume.

### *Advertising and Price Maintenance*

6. The manufacturer of a line of watches, jewellery or silverware has considered it his right and privilege to advertise to the public the price and quality of his goods. He has made it part of the retailer's condition of sale that he will not advertise any other lower price than that set by the individual manufacturer.

It will be abundantly clear to the observer of Canadian business that while Nationally price controlled merchandise must be sold at not less than the prearranged level, there is no shortage of bargains being offered to the public each week of the business year. The daily papers constantly contain advertisements offering every type of price concession to the buying public. The manufacturer of price maintained merchandise is fully aware that many retail stores would be quite satisfied to periodically offer well-known brands in similar price concessions and it is only by insistence on a program fair to each retailer can the supporter of a retail price maintenance program retain public acceptance and consumer goodwill.

### *Price Maintenance Creates Low Prices*

7. Since it has been proven in two recent court verdicts that monopolistic practice will not be tolerated in Canada (e.g. the Calgary bakers and the match companies), we believe that normal competitive practice, amongst manufacturers operating in Canada, ultimately creates the lowest price for the public. It has been a common complaint in jewellery stores since the year 1945 that retail mark-ups have been diminishing on price controlled merchandise. Indeed it is the most common trade complaint that on resale items more profit is required.

Among trade groups there is a shade of opinion which suggests that should resale price maintenance be eliminated, a wide range of merchandise must go up in price rather than down. While in this submission we do not look upon it as our responsibility to comment on other lines of business, it would seem to be clear to us that in many items sold to the public, an increase in price could be more readily anticipated than a reduction. To this extent it is our belief that resale price maintenance operates in the public interest rather than to its disadvantage.

### *Democracy in Business*

8. According to the recommendation of the MacQuarrie Commission, it is recommended that it be an offense for a manufacturer to withhold his stock from a price cutting retailer. We cannot fail to look upon this as an extraordinary proposal and without precedent. Up to the present time, it has been considered to be the democratic right of any business man to sell or refuse to sell according to his decision. It might be that the location of the store was wrong, the merchant a poor credit risk, too many outlets in the community or the operator slipshod and inefficient, however, it is unthinkable that any Government should even consider legislation which would eliminate such a basic democratic right.

### *The Present Business Trend*

9. According to the Dominion Bureau of Statistics figures, the jewellery trade in the month of September, 1951 showed a decline in sales of 17.6 per cent over September, 1950. The entire decline is not represented by this figure since during the current period prices have sharply increased due to



the imposition of added taxes so that this decline might be more properly estimated at 25 per cent or 30 per cent. While this unfavourable trend is evident, the jewellery trade is further threatened with metal scarcities in the period which lies ahead. In many parts of Canada jewellery stores are now operating auction sales and discount sales indicative that our merchants are already suffering a postwar pinch. Should the recommendations of the MacQuarrie Commission be implemented, it can only be concluded that an immediate flurry of price cutting will be generated with chaotic conditions created in this trade and industry.

Minimum prices can mean minimum wages. We submit that the Government gives consent to the principles of minimum wages through labour legislation—within rational limits. Why should anyone quarrel with a standard price within rational limits. All prices are largely somebody's wages and an arbitrary and unwarranted interference in the normal price structure is bound to hit somebody's wages somewhere along the line.

### *Conclusion*

10. With due deference to those who have been leading the discussion against resale price maintenance, we respectfully suggest that grave confusion exists as to illegal combine practices and a manufacturer's right to maintain his price to the public. It has repeatedly been inferred that prices are too high because of resale price maintenance, but when this inference is made, it usually transpires that the observer points to some form of monopolistic or combine practice. It is to be repeated that this Association is opposed to such operations and believes that business competition is the life blood of trade and that it will insure the lowest price to the public. We therefore propose to the Joint Committee of the Senate and the House of Commons that no steps be taken without the matter of pricing being given a complete and thorough investigation with the purpose in mind not only of seeing that monopolistic practices are avoided, but more particularly to recommend Canadian fair trade laws for the protection of the manufacturer and retailer who is anxious in a legitimate way to provide honourable and valuable service to the public and to see to it that such fair trade laws will permanently abolish the right of any trader to make use of loss leaders.

All of which is respectfully submitted by the

### CANADIAN JEWELLERS ASSOCIATION

Hubert Gaucher—President

1689 Mt. Royal E.,  
Montreal, Quebec.

Norman J. Leach—General Manager

73 Richmond St. W.,  
Toronto, Ontario.

November 22, 1951.

## APPENDIX B

## MEMORANDUM

submitted to

The Parliamentary Joint Committee on Combines Legislation  
by the

RETAIL MERCHANTS' ASSOCIATION OF CANADA

The Retail Merchants' Association of Canada was organized in 1896 and incorporated under an Act of Parliament in 1906. We operate in all Provinces of Canada, but Newfoundland, with offices in Vancouver, B.C.; Edmonton, Alta.; Saskatoon, Sask.; Winnipeg, Man.; Toronto, Ont.; Montreal, Que. and Saint John's, N.B. The head office is Montreal and the National Foods Division office, Toronto. Our membership, roughly 20,000 throughout Canada, is divided as between food, wearing apparel, house apparel, services and general.

The Association was organized and is maintained to provide a medium wherein matters of concern to all branches of retailing could be studied and leadership given in the orderly advancement of programs to safeguard the interests of its members and insure a fair deal to all who come within its orbit, whether producer, manufacturer, or consumer.

We are affiliated with the Canadian Retail Federation. As an affiliate of this body, we made representations to the McQuarrie Committee on September 15th, 1950, as will be seen in appendix A to the Canadian Retail Federation submission. As a result of our representations, our delegates appeared before the McQuarrie Commission on October 20th, 1950.

In both, written and verbal submissions to the Commission, two points were stressed: loss leader selling and retail efficiency. A resumé of our thinking is presented herewith.

*Loss Leader Selling*

In recent years, the practice of loss leader prices in promoting the sale of nationally advertized lines has tended to spread.

The term "loss leader" is accepted as meaning the selling of any article at a price lower than the actual cost, plus a markup sufficient to pay the handling cost of efficient distribution.

However, the expected competitive advantage of loss leader selling is soon nullified for its instigator when most competitors lower prices at once in self protection, thus causing the special low price to become the regular price. As a result, the whole trade is victim of loss leader selling and losses sustained have to be made up by higher prices than normally necessary on less competitive items.

Many manufacturers having recognized their ultimate distributor, the retailer, was entitled to a reasonable margin, such a margin being at least cost of merchandise plus the cost of efficient handling of same, have instituted minimum re-sale pricing policies as one remedy to the unsound and unfair practice of loss leader selling.

Many of those who have abstained from establishing such minimum re-sale pricing policies, did so only because they assumed section 2, subsection 1, paragraph C of the Combines Investigation Act forbade it.

We have always contended that this could not be the meaning of the law and the presently proposed legislation substantiates our interpretation.

While we recognize that it would be against the public interest to manipulate prices in order to lessen the competitive influence of free selling, we nevertheless

energetically contend that it is only justice to assure the efficient operator a reasonable return for his services.

### *Retail Efficiency*

This Association has never tried to protect inefficiency. At no time, have we worked to obtain anything else than a fair return for the efficient operator. Figures obtained from leaders of all classifications in our own membership as well as outside have permitted to determine what is actually the cost of efficient operation. As an example, taken out of the Food Industry, a report issued as recently as June 23rd 1951 by Loblaw Groceries Company Limited, a firm whose efficiency cannot be questioned, is significant. This report shows that overhead cost has been 14.26 per cent for fifty-three weeks of operation. If 1.86 per cent is deducted as provision for taxes, we have a remaining figure of 12.20 per cent as being what we call the cost of efficient operation.

Similar and confirming figures could be obtained from other interested classifications.

It is not the object of our Association to seek special favors or privileges by way of legislation, but we feel very definitely that since retailing is universally conceded as being an important basic industry. We submit that certain basic rights of retailers should be fully protected in the interest of the whole Canadian economy.

The enactment into law of the proposed legislation while at first thought, might appear to be in the public interest, will assuredly contravene the basic rights of the retail industry.

This was our thinking and the essence of our written and verbal submissions in the fall of 1950. We respectfully submit that nothing in the interim report of the McQuarrie Commission has modified our views.

With this Committee's further permission, we would like to show that the proposed legislation would in fact ultimately hurt the consumer.

### *Danger to Consumer*

If enacted, the proposed legislation against minimum re-sale price would have a direct influence on orderly marketing. It is certain that widespread price cutting would ensue, as already experienced early in October, in some parts of the country, when such legislation was first announced.

Chaotic conditions would result not only from reduced margins of profit for the retail trade, but also from reduction in employment. It is to be noted that wages account for as much as 60 to 70 per cent in the overhead of some classifications of retailing. With this in mind, any important reduction at the retail level would cause unemployment.

Another aspect of the problem involved would be the failures and bankruptcies as experienced in the vicious price cutting of the 1930's and result in unemployment and disruption of national economy.

Thus the consumer would be the ultimate victim of a system conceived in good faith to help him.

We respectfully submit that the consumer is the ultimate factor in the operation of the law of supply and demand. The consumer exercises control over the price of anything except the absolute necessities of life and can have a marked effect on those.

It is remarkable that a price set by one manufacturer on any article must be determined by the price of other competing similar articles produced by other manufacturers. When buying, the consumer will be attracted by:

1. the desire for such article
2. the brand name
3. the quality
4. the price



It is a known fact that the articles which have been under a re-sale price maintenance policy have always been available under various brand names, with the result that no actual harm has been done to:

- (a) free competition
- (b) the cost of living

If price maintenance as such is against the consumer, why would the Canadian Government and the various Provinces aid and abet such practices by appointing marketing boards wherein producers are forbidden by law:

- 1. to sell below a certain price,
- 2. to sell except through certain channels?

The answer that these boards are established to protect basic industries is accepted by us. But in turn, we respectfully submit that retailing is also a basic industry and is the most economical method yet devised to distribute goods.

It should be admitted that the practice of suggested re-sale prices has had no effect on the cost of living. We think we have proven that neither as an objective or as a result, this policy can cause any noticeable damage to Canadian economy.

On the contrary, we submit we have proven that the curtailing of such a practice would in effect be tantamount to creating disorderly conditions most dangerous to our economy.

With this in view, we respectfully submit that this parliamentary committee should recommend in its report that no legislation be enacted to curtail re-sale prices maintenance until such time as Parliament is prepared to consider and enact simultaneously legislation against loss leader selling.

It is not the purpose of our Association to defend maintained re-sale prices as an Association policy in the regularly accepted sense, but rather as the most effective means yet devised to curtail the unethical practices of loss leader selling.

#### *Conclusion*

In conclusion, we respectfully submit, on behalf of the Retail Merchants' Association of Canada, that the legislation prohibiting re-sale price maintenance be not presented at this session of Parliament and not until the McQuarrie Commission has completed its report. We further respectfully but urgently request that a hearing be given by your Committee to our official representatives.

Respectfully submitted,

RETAIL MERCHANTS' ASSOCIATION OF CANADA,  
FERNAND BOISSEAU,  
*National Secretary.*

354 St. Catherine Street East, Room 80,  
Montreal, Que.  
November 21st, 1951.

#### APPENDIX C

#### BRIEF PRESENTED TO THE PARLIAMENTARY COMMITTEE ON RESALE PRICE MAINTENANCE BY THE CO-OPERATIVE UNION OF CANADA AND LE CONSEIL CANADIEN DE LA COOPÉRATION

1. This submission is made on behalf of the Co-operative Union of Canada and Le Conseil Canadien de la Coopération, which together represent 1,318 cooperative societies throughout Canada having a membership of approximately 700,000. These societies are of many types comprising producer, consumer and service cooperatives.

It may be of interest to note that both the French-speaking and the English-speaking sectors of the movement have established provincial organizations to conduct their educational and promotional activities. These provincial bodies are federated to form the two national organizations which appear before you at this time.

2. On August 31, 1950, the Co-operative Union of Canada presented a brief to the Special Committee appointed by the Government of Canada to study the Combines Investigation Act. In that presentation we made the following statement: "Traditionally the co-operative movement, wherever found, has been a militant foe of restrictive trade practices in any form." This stand has characterised the movement ever since its inception in the year 1844. Nor is this surprising, since our fundamental aim is to give efficient service at cost to all who require it in the interest of human welfare.

On the subject of control of monopolies the Annual Congress of The Co-operative Union of Canada held in 1950, passed a resolution which noted the increasing concentration of economic power in Canada, and required the officers of the Union to give careful attention:

1. To any legislation or administrative regulations which have as their end the restriction and control of monopolistic practices. -

It is significant also, that the International Co-operative Alliance, which unites the co-operatives of thirty countries, has, over many years, undertaken very comprehensive research in the field of monopoly enterprise. Its findings are published in a quarterly entitled Cartel, which is a review of international monopoly developments and consumer protection.

3. In the course of the brief presented to the Special Committee we noted several of the more serious monopolistic practices which have appeared in this country during recent years. Among them was that of resale price maintenance, the subject of your investigation. Our concern over the harmful effects of this trade practice was shared by the Lloyd Jacob Committee which expressed the following opinion in its Report:

Collective price maintenance schemes appear to us to have led to the comprehensive regulation of competition in the distributive trades and to have impeded the development of economical methods of trading and prevented the reduction of distributive costs and prices. Associations of traders designed to bring their collective power to bear to maintain the members' prices are, in our view, undesirable. (Para. 166, Report of the Committee on Resale Price Maintenance, U.K. 1949).

4. In operating their co-operatives and developing a Canadian Co-operative Program, the consumers whom we represent encounter difficulties and frustration. It is obvious that consumer co-operatives cannot function successfully without free access to goods. But our experience is that we are denied this right because of our policy of supplying ourselves with goods at cost through the payment of patronage refunds.

Co-operatives are, therefore, very deeply concerned with that portion of the proposed legislation which deals with the refusal to sell or supply goods. This is Section 37A, subsection (3).

Although co-operatives usually supply goods to their members initially at current market prices, under the co-operation technique patronage refunds are paid to the members at the end of the year in proportion to their patronage. The eventual payment of patronage refunds, however, is regarded by many manufacturers as a serious breach of their established policy of resale price maintenance.

In order therefore, to adhere to their basic principle of doing business at cost, co-operatives require to be supplied with goods without complying with a price maintenance requirement.



The legislation now before the Committee is designed to make goods available without an agreement on the part of the persons supplied to maintain prices, and therefore co-operatives approve of the intent of the legislation. However, in examining the specific provisions of the proposed amendment to the Combines Investigation Act, we find that it is inadequate to afford protection insofar as co-operatives are concerned.

Subsections (3a) and (3b) do not cover the case of a distributor or retailer paying patronage dividends. The section as it now reads prohibits a dealer from refusing to supply goods because the buyer refuses to maintain prices at the time of resale, but the section does not prohibit a dealer from refusing to supply goods because the buyer pays patronage refunds, and such a prohibition is necessary if the provision is to assist co-operatives in acquiring goods. A co-operative may not have refused to sell goods initially at a specified price but the goods may be withheld by the dealer because of the patronage refund policy followed by the buyer.

In view of the experience which co-operatives have had it is urged that the proposed section be amended by adding subsection (3c) which might be in the following form:

No dealer shall refuse to sell or supply an article or commodity to any other person for the reason that such other person

(c) has resold or offered to resell or proposes to resell or offer to resell the article or commodity on the basis that such other person is entitled to patronage refunds with respect to such article or commodity.

5. Although we submit that such an amendment would be helpful in assuring that co-operatives are not denied goods, it should be made clear that we consider further important steps are necessary to deal with restrictive trade practices.

In addition to the practice of paying patronage refunds, manufacturers and jobbers give many reasons for their refusal to supply goods to co-operatives. Some regard co-operatives as socialistic, some are under the mistaken impression that they do not pay taxes, and others just don't like them. Refusal to supply goods on such flimsy pretexts hampers the co-operatives and limits real free enterprise.

While approving of the intent of the proposed legislation and urging the amendment set out above, the Co-operative Union and Le Conseil submit that it does not go far enough. There must be a more thorough check on restrictive trade practices. We therefore submit for study and consideration a general proposal which might be incorporated in an amendment to the Combines Investigation Act. It is submitted that this proposal, which deals with a vital aspect of the problem at hand and is worthy of study, could, with proper safeguards, be enacted into legislation.

In general terms the proposal is that no dealer shall refuse to sell an article or commodity for cash or equivalent at its established price to any person legally carrying on a legitimate business in accordance with accepted trade practices, and in the event of such refusal, such person shall have the right to refer the matter to the Combines Commissioner for investigation.

6. It has been stated that price maintenance offers a protection behind which consumer co-operatives may continue to expand and gain strength. This may be so to a limited degree. However, our movement, committed as it is, to the public welfare, will not compromise with monopoly, but rather supports the intent of the proposed legislation. Furthermore, it may be that the prohibition of resale price maintenance would lead to a period of unsettled prices which would embarrass the co-operatives as well as other businesses. Nevertheless, it is the opinion of our members that in the interest of the



consuming public generally, they must be prepared to face this threat and overcome it through increased operating efficiency.

7. An important result of minimum price maintenance has been clearly set forth in the Report of the Royal Commission on Prices, 1949, Volume 1, page 26:

"Resale price maintenance, like other forms of restrictive practices, does offer what appears to the manufacturer and distributor, a happy relief from the unending struggle against harsh correctives of the free market system. But the solution, we think, is illusory. It not only vitiates the spirit of enterprise by which all commercial and industrial life is nourished; it deprives the consumer of his right to seek and patronize the more efficient distributors, namely those who, over a period of time can offer goods for sale at prices lower than their competitors."

The Report of the Royal Commission on the cost of living in Newfoundland 1950, stated that insofar as the cost of living in that province is concerned, the Commission's findings tend to support the conclusions of the Royal Commission on Prices set forth in the above quotation.

8. A further consideration, even more vital to the welfare of the consuming public than the reduction of prices, also prompts us to appear before you. It is the disturbing realization that the penalties imposed on retailers by manufacturers, such as warnings, fines, withdrawal of discounts, denial of supplies for not maintaining fixed minimum prices, amount to a private system of law, which in effect is outside the jurisdiction of the Courts.

This and other monopolistic practices tend to create private business governments in no way responsible to the community, which exert their influence in a manner which may be inimical to business efficiency, may conflict with governmental purpose, and in many countries may be, in principle, hostile to social progress.

9. Before concluding this presentation we wish to deal with two arguments frequently advanced by the proponents of resale price maintenance.

Much has been made of the threat of a free market price to the small storekeeper whose volume would suffer at the hand of the larger, more efficient retailer. The security of his present position appears to us to be more apparent than real, especially in the excessively wide-margin fields. It is a fact that when supply is sufficient, these lines soon become crowded with numerous, small, inefficient operators who are anxious to seek shelter under the resale price maintenance umbrella. As a result the total earning to be made is divided among a larger number of dealers, with the efficient merchant of long standing reaping a greatly diminished return.

Indeed the point may be reached at which the turnover per business becomes so small that a higher unit margin must be sought. Supporting this superfluous and costly distributive machinery is the helpless consumer whose power to reward efficiency has been filched from him.

W. Arthur Lewis, professor of Economics in the University of Manchester and an outstanding authority in this field, writing in the journal "Economica" (November, 1945, p. 202), stated:

"The case against price maintenance is beyond doubt. It is one of the major sources of waste in distribution, and the public would benefit greatly if it and the boycotts, stop lists, discrimination against co-operative societies, and other paraphernalia by which the system is enforced, were made illegal."

10. In the second place, those who advocate this restrictive practice have expressed their fear that the use of the "loss leader" as an advertising device would become prevalent in a free price market. They have visions of utter chaos and the elimination of manufacturers and dealers through ruinous price wars.

This view, we believe, fails to take into account the changes brought about by modern merchandising methods. During the depression-ridden days of the 1930's the evolving chain store type of operation was able to attract customers away from the independent retailer by offering a few high-turnover items at cost, or less than cost, price. What he lost on these "specials" he more than gained on his regular high-margin goods.

With the growth of the chain store phenomenon, however, the advantage has disappeared. Chain store A is now competing not only with the independents in its neighbourhood, but also with chain stores B. C. D. etc. These latter can play the game just as skilfully, with the result that all are reluctant to adopt the device.

Should there be some substance to this fear, however, we would agree with the view contained in the white paper presented to the British Parliament by the President of the Board of Trade, last June, that "unfair or excessive methods of price competition would be a matter for Parliament to deal with on its merits; fears of their possible emergence in the future cannot constitute a valid reason for allowing harmful restrictive practices to continue."

11. In dealing with the particular problem before your Committee the interest of the consumer is paramount, and the submission is made primarily on behalf of the hundreds of thousands of consumers who have through necessity organized to supply themselves with goods and services at cost. The members in these co-operatives believe that through the development of the co-operative movement they can, by the application of the co-operative method and the elimination of profit in the supplying of their goods, eventually solve to a great extent the problem of monopolies which is giving this Committee and Parliament such deep concern.

In support of this belief we would cite the case of the Swedish Cooperative Union and Wholesale Society (Kooperativa Forbundet). Beginning in the years immediately following the First World War, the Swedish wholesale, in company with other Scandinavian co-operatives, undertook a systematic attack on various cartels which were oppressing the consuming public. Most famous of their achievements was the successful entry into the electric lamp field which resulted in a saving of 5,000,000 kroner a year for the Swedish public. This was followed by similar attacks on the vegetable oil and cash register cartels, among others. In many cases these efforts were carried out in co-operation with other interested elements in the community.

In conclusion, we submit that co-operative enterprise, if allowed to develop normally will of itself do much to combat monopolistic, restrictive trade practices and to supplement federal and provincial legislative action in this field.

Respectfully submitted.

Ottawa, December, 1951.

## APPENDIX D

November 21, 1951.

BRIEF PRESENTED BY INTERPROVINCIAL CO-OPERATIVES LIMITED  
TO THE PARLIAMENTARY COMMITTEE ON PRICE  
MAINTENANCE LEGISLATION

Interprovincial Co-operatives Limited is a co-operative incorporated under Letters Patent by the Secretary of State. Its bylaws are the usual in a co-operative; namely, that capital shall be supplied on the basis of the use made of the organization by its members, and that the surpluses arising out of its operation shall be distributed on a patronage basis.

We list hereunder the shareholding members of the organization, together with their volume of business for the fiscal year ending 1950:

Co-operative Federee, Montreal, Quebec .....	53,268,000
United Co-operatives of Ontario, Toronto .....	49,319,000
Saskatchewan Federated Co-operatives Ltd., Saskatoon, Saskatchewan .....	17,500,000
Maritime Co-operative Services, Moncton, N.B. ....	7,939,000
Manitoba Co-operative Wholesale, Winnipeg, Man. ....	5,095,000
Alberta Co-operative Wholesale, Edmonton, Alta. ....	1,850,000
British Columbia Co-operative Wholesale, Vancouver, B.C. ....	544,000
*Scottish Co-operative Wholesale Society, Glasgow, Scotland .....	
*Co-operative Wholesale Society, Manchester, Eng. ....	
Total .....	<u>\$135,000,000</u>

\* These two organizations are members, but their purchases are somewhat limited. Their volume is not shown as it would present an unfair picture of the potential volume of Interprovincial Co-operatives Limited.

This Brief follows one presented by the Co-operative Union of Canada on the matter of Price Maintenance, and we wish to say first that we wholly agree with and endorse that presentation. In addition we wish to make two general statements dealing with the matter at hand:

1. The co-operative movement, if more universally practised, has the answer to many of the problems that face the Canadian people in respect to cartels, monopolies and combines.
2. The prohibition, by legislation, of price fixing at the retail level is not a wholly effective approach to the problem of combines and monopolies, which is one of the most vexing problems facing the Canadian people.

In support of No. 1 above, we would point out that Sweden has never found it necessary to enact what might be generally described as "combine legislation," because of the dominative position of co-operatives in that country. In this connection we quote from the book "The Middle Way" by Marquis W. Childs.

A report of a Swedish Government Commission appointed in 1922 to investigate the middleman's profit, said:

It is clear that consumer co-operation offers a vigorous defence against the tendencies of private trade to combine in order to keep up prices artificially. Many examples could be mentioned where large



organizations of shopkeepers have been forced by the co-operative society to scale down their prices—an act which the trade associations by themselves otherwise would have prevented. The great importance of the co-operative movement in this respect has been proved in a remarkable degree, particularly during the period of declining values, when the co-operative societies, as a rule, have been the first to reduce prices.

Emphasizing point No. 2 above, we would say that when it is obvious that the only people who are in a position to provide effective competition are denied goods, the price at which such goods might legally be sold becomes somewhat meaningless.

One hears quite frequently the terms "Private Enterprise" and "Free Enterprise". The terms are broad ones, and like many of a similar nature, are capable of wide interpretation. It seems to be a paradox that those who proclaim the loudest that "free enterprise" should be preserved, are usually the ones who put a very narrow interpretation on it. If a narrow interpretation of "free enterprise" is allowed to prevail, we would see genuine "free enterprise" as such, gradually disappear from the Canadian scene. As evidence of this very definite trend, we only have to examine the work of the Commissioner of the Combines Investigation Act over the past few years. We mean not only the cases that have gone to prosecution, but all the investigations that have been made.

We would like to place before the Committee the co-operative definition of "free enterprise", and we quote the Rt. Rev. Mgr. M. M. Cody, head of the Extension Department, St. Francis Xavier University at Antigonish, Nova Scotia, and a former President of the Canadian Association for Adult Education:

The Co-operative technique permits all people to get in on business just as stocks and shares permit some people to get in on old line private profit enterprise. This distinction between the old line business and co-operation is that the former is a *private profit enterprise* and the latter is a *private nonprofit enterprise*.

Co-operation, in other words, is a technique by which a democratic people can carry on their business affairs, without taking any toll from their fellows. It does not destroy, philosophically speaking, the profit motive, but it does eliminate the surplus of the economic process from being directed into the hands of one class to the detriment of other classes. Men go into economic co-operation for the reason that it will improve their economic status, and that is a profit motive in the real philosophical sense of that term.

Co-operatives in Canada and elsewhere are built and operated within the framework of that interpretation. Co-operatives exist in every country in the world, and they are invariably found among the "low income groups", in their country of domicile. In England it is the salaried and wage earning group. In Canada—and United States for that matter—co-operatives are composed almost wholly of agricultural people. These people have, within the framework outlined above, invested many many millions of dollars in extensive facilities for assembling, handling, marketing and processing of primary products, as well as stores, filling stations, warehouses (wholesale and retail) lumber yards, feed plants, coal mines, sawmill, timber berths, oil wells and a refinery. Surely, having freely and voluntarily made investment of their own money in their own business, they are entitled, under a free economy, to purchase goods from manufacturers and suppliers on the same basis as any other business.

We shall now attempt to show that co-operatives in Canada have been subjected to unfair discrimination by a segment of Canadian manufacturers and

suppliers. Various reasons have been given by such suppliers, but it is quite obvious that some of the reasons given are not the real reasons. On the other hand, some of the suppliers have been frank and honest in their attitude (and we honour and commend their frankness) and have stated the real reasons. In endeavouring to summarize these reasons, they would appear to fall into three general categories:

- (a) They challenge the right or propriety of co-operatives distributing their surplus to owners and patrons of the business on a patronage basis.
- (b) The laws of Canada in respect to taxation are unfair to private business, and consequently co-operatives should not be supplied with goods.
- (c) The co-operatives are socialistic and are going to "take over" the business of the country and consequently are not in the public interest and should not be supplied with goods.

In support of these three statements we would like to read into the records letters which have been received by several co-operative organizations. We do not wish to make public the names of the firms who wrote the letters, nor to whom they were addressed. We think it would be unfair to do so as it would mean penalizing them for their forthrightness.

In support of Paragraph (a):

Your mail order of January 30th (1947) has been forwarded to our Calgary office for attention.

Undoubtedly our representative, Mr. .... has already been in touch with you and explained our sales policy. As you are no doubt aware by this time that since the time the company was founded we have undertaken to maintain a price protection policy on the resale of our products.

In this effort we have been extremely successful, but in no small measure has our success been due to the co-operation of the retail trade. Our products are sold at uniform prices throughout Canada and we have insisted that no plan of rebates or premiums be returned by any retailer to their customer, which procedure we regard as reduction in the minimum retail price.

We understand that it is the policy of your organization to pay periodic rebates depending on the amount of purchases to your customers or shareholders. Under the circumstances you will therefore understand that we would be violating our pledge to the other ..... of your community if we shipped you our products. We regret therefore that under existing circumstances we will be unable to fill your order.

We trust that you will be able to appreciate our position in this matter.

The following, from a wholesale firm, is in the same vein:

A number of manufacturers have written us advising that the profits of your organization are returned to the customer which in itself constitutes a cut in price; that is in the minds of the manufacturers. The cold fact is that the general run of retailers object to buying from a manufacturer whose goods are not sold at regular list prices to the public.

In view of this would you please advise us whether or not this applies in your case? As for ourselves we should like very much to serve you but we are the middleman in the matter and should we not bide by the policies of the manufacturers, then they would simply refuse to sell us and in the end we could not serve you. We do not feel that we have any right to advise you but would it not be possible for you to



pay the money out as a dividend on investment rather than as a rebate on purchases? In any case, we will have one of our representatives in ..... in about a month's time and unless we hear from you sooner we shall be glad to have him call and interview you personally.

One Regional Co-operative Wholesale in Canada, after making application over a period of several years, was finally allowed to distribute the goods of an industry. It was only allowed these goods on a signed undertaking that they would not pay patronage dividends on this merchandise. When the industry was under investigation by Mr. McGregor, the former Commissioner of the Combines Investigation Act, these people asked for the return of all the documents, and they were—very foolishly—given back. Only two of the co-operative wholesales of Interprovincial membership are distributing the goods of this industry—others have been refused.

In support of Paragraph (b) we submit the following letter:—

Referring to your letter of September 13 (1951), we wish to assure you that we have no ill-will towards you, and other members of your organization, but we feel that the co-operatives, whether retail, wholesale or manufacturing, are unfair competition.

I have never been able to see any justice in a situation which enables co-operatives to avoid paying their share of Federal taxation, under a plan which sounds reasonable but actually is very unjust to people who have to pay Federal taxes in one form or another.

It should not be necessary to point out that co-operatives everywhere pay all taxes that are assessed against them, whether at the Municipal, Provincial or Federal level. If they do not pay such taxes, the tax collectors have wide powers to enforce collection, and we might add, invariably they do. The laws governing taxation of all persons at all levels (Federal Income Tax included), is arrived at by the democratic procedure recognized in every democratic country. In the case of Federal Income Tax, by Parliament. The present provisions of the Federal Income Tax Act relating to Patronage Dividend were passed in 1946, largely as a result of a Royal Commission which enquired into the taxation position of co-operatives, and with the exception of a newly-formed co-operative composed of individual members, does not exempt co-operatives.

This is the only firm which has been frank enough to put their views in the form of a letter. Others have transmitted the same information verbally.

In support of Paragraph (c), we quote the following letter:

"We have your letter of June 8th, (1950), enclosing your several orders for ..... and cheque in the amount of \$20,000. As you suggest, Mr. .... called on us when he was in ..... a week or so ago, and at that time we outlined to him our position associated with what we feel to be essential in the distribution of such ..... products as we produce. He will, no doubt, be conveying the substance of these discussions to you in due course.

"As a result of these discussion, we are returning herewith the orders which you were good enough to send us, along with your cheque."

Our position in this respect, from a documentary standpoint is not as clear as we would like it to be, because the above quoted letter refers to an interview wherein their position was outlined, and on which we only have the report of the co-operative official who made the call. The company official presented our representative with a typed copy of excerpts taken from the 21st Annual Report to the shareholders of Saskatchewan Federated Co-operatives Limited. A copy of the typed extracts from the Annual Report, as supplied to our representative, is attached to this Brief.



Violent exception was taken to the part of the report which set as a co-operative goal, the ownership of production and processing facilities necessary to manufacture the goods needed by the membership. Exception was also taken to that section of the report which indicated that Saskatchewan Federated Co-operatives Limited should not find it necessary to put salesmen on the road to sell their goods to their own membership. Strong exception was also taken to the policy of the Board of Directors of Saskatchewan Federated Co-operatives Limited in buying on the British market, particularly those goods which that organization were denied from Canadian supplier and manufacturers. The Company further stated in the course of the interview that if they sold us, they would "simply be building up a competitor for themselves in the future." It was paradoxical that this Company criticized the co-operative for—

- (a) Going to be so big that it would be a threat to the supplier;
- (b) For a policy of not having salesmen on the road to sell goods.

We would have liked to have been in a position to present more documentary evidence in support of our experience, but documentation of this type is difficult to get. As we said previously, we respect those who have been frank and honest and not ashamed to put their position over their signature.

Some manufacturers frankly told us that they are very desirous of selling their goods to the co-operatives. They have no quarrel with our way of doing business, but they have been told by the Industry Association, of which they are a member, that they could not admit the co-operatives to the "list".

If this Brief is judged to lack proper documentation, we think there is sufficient evidence of our main contention to be found in a review of the publications issued from time to time by the Combines Investigation Branch, covering the various investigations which have been made over the past number of years.

We are of the opinion that we have submitted sufficient evidence to indicate that the factors of competition are not allowed "free play" in Canada. Canada cannot become a truly great nation if her economy is to be hampered by a selfish minority, who use their tremendous power to "throttle" competition, and by these tactics not only encourage and abet the formation of combines, but sharply add to the cost of living in Canada. Therefore, in order to achieve the goal "free competition", we strongly endorse the recommendation contained in the Brief of the Co-operative Union of Canada as follows:

No dealer shall refuse to sell an article or commodity for cash or its equivalent at its established price, to any person carrying on a legitimate business in accordance with accepted trade practices, and in the event of such refusal, such person shall have the right to refer the matter to the COMMISSION for investigation.

Such an addition to the Combines Act would be a strong deterrent to the growth of combines as well as a definite contribution to halting the rising cost of living. The simple prohibition of retail price maintenance will not go very far in achieving either of these goals.

This Parliamentary Committee has been specifically charged with enquiring into the practice of "price fixing" at the retail level—commonly called "price maintenance". The latter term is not sufficiently descriptive of the practice.

From a co-operative standpoint the price to the consumer is not particularly relevant. If it is placed too high, it simply means that the patronage refund is large. If it is placed too low, it simply means that the patronage dividend may be nonexistent. We frankly admit that there are many arguments in favour of price fixing at the retail level. We are further frank to

say that those who are charged with the responsibility of merchandising within the co-operative movement, are often in favour of it. It makes their business operations less cumbersome. It is our considered opinion, however that the arguments against price fixing at the retail level are greater than those in favour of the practice. We believe, therefore, that price fixing at the retail level should be illegal, and we commend the Government for their proposed legislation.

We believe, however, that the suggested draft of the Legislation, as it appeared in Appendix "A" Committee Minutes and Proceedings No. 1 is inadequate, and that the following should be added.

"(c) has resold or offered to resell or proposed to resell or offers to resell, the article or commodity on the basis that such other person is entitled to this patronage refund with respect to such article or commodity."

There are many businesses other than co-operatives which follow the practice of "patronage refunds" and such procedure should be recognized in the legislation. It is known, of course, that such patronage refund, if paid in accordance with the regulations as prescribed in the Income Tax Act are deductible from taxable income irrespective of the type of business, co-operative or nonco-operative.

We attach hereto a schedule showing a comparison between a number of items picked at random in a retail store. The list shows the retail selling price, the wholesale cost and the margin in percentage in markup on selling. It is not necessary for us to emphasize the result of these figures.

Submitted on behalf of Interprovincial Co-operatives Limited.

#### Extracts from

"REPORT OF THE BOARD OF DIRECTORS" TO THE TWENTY-FIRST ANNUAL MEETING  
OF THE SHAREHOLDERS

SASKATCHEWAN FEDERATED CO-OPERATIVES LIMITED

January 17, 18 and 19, 1950

#### Extracts from "Foreword"

Elsewhere in this report are pictured some of the offices, warehouses, and productive enterprises OWNED by Federated, and paid for almost entirely from savings made by the simple process of locals' purchasing from their own wholesale. During these 21 years we have acquired, in addition to the buildings in Saskatoon and Regina, an Oil Refinery, seven producing Oil Wells, two Coal Mines located at Drumheller, Alberta, a Sawmill and Timber Limits at Canoe, British Columbia, and Feed Plants at Regina and Saskatoon. Substantial as these assets are, they represent only part of what has been accomplished. CASH dividends totalling more than \$1,329,000.00 have been paid to local associations, thus returning additional purchasing power to the communities where the patronage originated.

A modest start has been made toward the Co-operative goal of complete OWNERSHIP of the productive and processing facilities necessary to manufacture all the goods needed by our membership.

Much greater progress than was possible during our first 21 years can be made if the co-operators insist on buying Co-operative all the way. All factories, refineries and processing facilities are paid for by the Consumer in the cost of goods and services. Only Co-operative facilities are OWNED by those whose patronage has provided the money to acquire them.



*Extracts from "Report"*

The acute situation re crude oil supplies which prompted your Board to embark on a drilling program has completely changed as a result of the extensive drilling operations of both major and independent oil companies in the Leduc and Redwater fields. Plentiful supplies of Canadian crude make it unnecessary for us to import crude from the U.S.A., or to take the risk of drilling further wells of our own until better terms are offered than those hitherto available.

We shall, however, always be vulnerable until we control the source of supply of sufficient crude to provide all the requirements of our people in refined products. With this end in view, plans for the future should include the provision of some part of our refinery earnings being set aside for drilling operations in the hope of finding a new oil field so that we may secure crude oil supplies at minimum cost.

If we are to realize this potential as one of the greatest co-operative developments on the North American Continent, we must be prepared to change some of our present methods of merchandising. Maximum savings to the consumer are being sacrificed by "aping" some of the uneconomic aspects of private enterprise. It should not be necessary for Federated to put salesmen on the road, to sell to our local co-operatives goods that have been purchased for them by the wholesale they OWN. Another practice that is costly at both wholesale and retail levels, and which must be corrected, is the multiplicity of brands of the same commodity presently demanded by our membership. Not only does this result in a slower turnover, but it ties up a much larger investment in inventory than is necessary at both levels.

The introduction of more merchandise under the "Co-op" brand should enable us to considerably reduce the number of items carried and your Board and Management intend to put greater emphasis on having goods of first-class quality put up under the "Co-op Label."

Your Board has endorsed the "Buy British" campaign and has instructed its Management to make all possible purchases from the United Kingdom, preferably from the Old Country Co-operatives.

During 1949 we encountered difficulties due to shortage of certain lines, but in the overall picture we have had a complete stock most of the year—a stock that was equal in variety to competitive wholesalers. We carry a complete stock of current and nationally advertised merchandise. We have also expended into more merchandise under our own Co-op label, and consumer acceptance of our own brands has been encouraging. Many more products will be packed under the Co-op label as soon as satisfactory deals can be made.

*Hardware and Farm Equipment*

Sales for this department show an increase of \$177,670.00 over the previous year, total sales being \$1,676,309.00.

We are budgeting for an increased sales volume of 10 per cent over 1949, and we should attain this figure provided we receive the support of our local co-operatives.

During the past year, inventories were reduced considerably, especially slow moving and obsolete lines, and we are now purchasing new stocks to more adequately service our locals during 1950.

In eliminating and disposing of certain stocks which were acquired during the war years, and consequently were either over-priced, inferior in quality or obsolete, your hardware department suffered a loss of \$132,483.00. The greater portion of this loss, amounting to \$91,462.00 was taken in the liquidation of Machine and Tractor parts.



In following the general policy of Federated, this department is exploring the British market for steel goods, such as nails, wire, wood screws and tools. It is hoped that this market can be developed and it is felt that now that Britain is in a competitive position due to the devaluation of the pound Sterling, every effort must be exerted to increase bilateral trade.

The only way co-operatives can create maximum savings and thus made a greater impact on the economy of our people, is to get into production and control the source of supply of the raw materials. We must constantly remind our members, local directors and managers of this fact and this is the continuous work of the Organization Services Division.

#### CONCLUSION:

We have often stated that the ultimate objective of the Consumers' Co-operative Movement is to OWN our own system from production to consumer. Such a program cannot be accomplished overnight, but must be our goal if our consumer members are to receive maximum savings. Margins between wholesaling and retailing can and are being narrowed, with a corresponding widening at the manufacturing level. Savings in the distribution of commodities are thus only a small part of what is possible when the savings from manufacturing and processing in co-operatively owned plants is passed on to the consumer. An examination of our financial statement reveals that the savings made in actual distribution are comparatively small, and that almost all the savings have come from the ownership of our own productive enterprises.

Inasmuch as your wholesale will continue to be a "procurement agency" for many of the needs of our people for some time to come, emphasis must be placed on shortening the economic distance from the producer to the consumer.

Private wholesales' chief concern is to sell to the retail stores and they are not much concerned with the problem of disposing of merchandise at the retail level. Our problem, however, is a very different one. Owned as we are by the same people who own the local outlets, we have accomplished little by a transfer of goods from our wholesale to warehouse to the shelves of the country store. Our job is only complete when the goods have passed through to the consumer. It is obvious, therefore, that a more concentrated effort must be made to ascertain the needs of our individual members so that when procurement is made by the wholesale they will pass into the hands of the consumer via the local associations in the shortest possible time.

#### LIST OF PRICE MAINTAINED GOODS

Article	Cost Retail	Cost Wholesale	Margin (Based on Selling Price)
Glass Coffee Pot .....	\$ 4.25	\$ 2.83	33.4%
Glass Double Boiler .....	5.05	3.37	33.2%
Pressure Cooker .....	27.50	18.30	33.4%
Waffle Iron .....	15.45	10.30	33.3%
Food Mixer .....	73.75	49.17	33.3%
Toaster .....	32.00	21.33	33.3%
Electric Tea Kettle .....	12.50	8.33	33.3%
Aluminum Sauce Pan .....	14.55	9.69	33.4%
Alarm Clock .....	8.75	6.02	31.2%
Blow Torch .....	11.25	8.40	25.3%
Totals .....	\$ 205.05	\$ 137.74	32.8%

## LIST OF GOODS NOT PRICE MAINTAINED

Article	Cost Retail	Cost Wholesale	Margin (Based on Selling Price)
Glass Ware (Fire King) .....	\$ 1.98	\$ 1.46	26.2%
Aluminum Tea Kettle .....	3.98	2.84	28.6%
Aluminum Sauce Pan .....	2.90	2.17	25.1%
Door Lock Set .....	8.50	6.35	25.2%
Planes .....	17.10	12.80	25.1%
Hack Saw .....	2.50	1.85	26.0%
Hand Saw .....	8.85	6.65	24.8%
Level .....	6.20	4.65	25.0%
Enamel Roaster .....	5.15	3.86	25.0%
Enamel Sauce Pan .....	2.70	1.94	31.8%
Totals .....	\$ 59.86	\$ 44.57	25.5%







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HOUSE OF COMMONS  
Fifth Session—Twenty-first Parliament  
1951  
(Second Session)

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JOINT COMMITTEE OF THE SENATE  
AND THE HOUSE OF COMMONS  
ON

**COMBINES LEGISLATION**

Joint Chairmen—The Honourable Senator A. L. Beaubien  
Mr. James Sinclair, M.P.

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MINUTES OF PROCEEDINGS AND EVIDENCE  
No. 14

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THURSDAY, DECEMBER 6, 1951

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WITNESSES:

Mr. Norman M. Dunn, Counsel; Mr. Robert U. Lamb, Managing Secretary;  
Mr. Angus Firth, Assistant Secretary; Mr. George Hougham, Consult-  
tant; Mr. Chalmers Gorsline; Mr. R. I. Blain, all representing the  
Ontario Retail Hardware Association.

OTTAWA  
EDMOND CLOUTIER, C.M.G., O.A., D.S.P.  
PRINTER TO THE KING'S MOST EXCELLENT MAJESTY  
CONTROLLER OF STATIONERY  
1951





## MINUTES OF PROCEEDINGS

THURSDAY, December 6, 1951

The Joint Committee of the Senate and the House of Commons on Combines Legislation met at 10.30 o'clock a.m. The Joint Chairmen, the Honourable Senator A. L. Beaubien and Mr. James Sinclair, M.P., were present, Mr. Sinclair presiding.

*Also present:*

*For the Senate:* The Honourable Senators Aseltine, Burchill, Fogo, Golding, Horner, Vaillancourt.

*For the House of Commons:* Messrs. Beaudry, Blair, Boucher, Carroll, Carter, Cauchon, Croll, Dickey, Mrs. Fairclough, Messrs. Fleming, Fulton, Garson, Harrison, Hees, Jutras, MacInnis, Mott, Murray (*Oxford*), McLean (*Huron-Perth*), Roberge, Stuart (*Charlotte*), Thatcher, Welbourn.

*In attendance:* Mr. Thomas N. Phelan, K.C., and Mr. Guy Favreau, Counsel for the Committee; Mr. Norman M. Dunn, Counsel, Mr. Robert U. Lamb, Managing Secretary, Mr. Angus Firth, Assistant Secretary, Mr. George Hougham, Consultant, Mr. Chalmers Gorsline, Mr. R. I. Blain, all representing the Ontario Retail Hardware Association.

The Chairman tabled a brief received from Woodward Stores Limited, of Vancouver, B.C.

On motion of Mr. Thatcher, the said brief was ordered to be printed as *Appendix J* to this day's Minutes of Proceedings and Evidence.

Mr. Dunn was called, tabled a brief, and Appendix thereto, on behalf of the Ontario Retail Hardware Association, which are printed as *Appendices A* and *B* to this day's Minutes of Proceedings and Evidence; was heard and questioned thereon.

Messrs. Lamb, Gorsline, Blain, Firth, and Hougham were called and questioned.

Mr. Favreau tabled the reasons for judgment in the case of *C. Duquette et al* versus Charles E. Frosst and Co.

On motion of Senator Aseltine it was ordered that the said reasons for judgment be printed as *Appendix K* to this day's Minutes of Proceedings and Evidence.

On motion of Mr. Hees it was resolved that the Committee sit at 3.30 o'clock this day for further questioning of the witnesses.

At 1.05 o'clock p.m. the Committee adjourned until 3.30 o'clock this day.

### AFTERNOON SITTING

At 3.30 o'clock p.m. the Joint Committee resumed. The Joint Chairmen, The Honourable Senator A. L. Beaubien and Mr. James Sinclair, M.P., were present, Mr. Sinclair presiding.

*Also present:*

*For the Senate:* The Honourable Senators Aseltine, Burchill, Dupuis, Fogo, Golding, Horner.

*For the House of Commons:* Messrs. Blair, Carroll, Carter, Cauchon, Croll, Dickey, Mrs. Fairclough, Messrs. Fleming, Fulton, Garson, Harrison, Hees, Jutras, MacInnis, Mott, Murray (*Oxford*), McLean (*Huron-Perth*), Roberge, Stuart (*Charlotte*), Thatcher.

*In attendance:* As listed for morning sitting.

Questioning of the witnesses was continued.

The witnesses retired.

In accordance with the recommendation contained in the Fourth Report of the Sub-Committee on Agenda and Procedure, concurred in on November 30, the following documents are printed as Appendices to this day's Minutes of Proceedings and Evidence:

*Appendix C:* Brief submitted by Canadian Association of Consumers.

*Appendices D, E, F, G, H, I:* Briefs by the Alberta, Manitoba, Ontario, New Brunswick, Saskatchewan and Quebec Branches of the Canadian Association of Consumers.

At six o'clock p.m. the Committee adjourned until Friday, December 7, at 10.30 o'clock a.m.

A. L. BURGESS  
*Clerk of the Committee.*

## EVIDENCE

DECEMBER 6, 1951.

10:30 a.m.

The CHAIRMAN: Come to order, gentlemen.

The only order of business before we hear from the Ontario Retail Hardware Dealers Association is this; that within approximately the last 10 minutes I received a copy of a brief from the Woodward Stores, of Vancouver. It was decided at the meeting of the steering committee yesterday that no briefs received after December 3 would be printed in our record; however, this one is from British Columbia and has suffered from the handicap usual to material coming from that province and only arrived this morning. I think under the circumstances that we should accept this brief and have it printed in our record. We have received about 10 copies and they will be distributed to members immediately, as far as they go.

Mr. HEES: Are they for or against?

The CHAIRMAN: They are for competition, Mr. Hees.

Is there a motion that this brief should, along with the others received up to and including yesterday, be printed in the record, as it was sent to us by special delivery.

Mr. THATCHER: Could you tell us what the brief is about? Is it another department store that is taking the same stand as Eaton's?

The CHAIRMAN: I do not see any point in the Chairman enlarging on a two page brief when you are going to have it in the matter of a couple of minutes. All those in favour of this brief being printed in our record please signify?

Those opposed?

Carried.

The CHAIRMAN: Does anyone else want a copy of this brief?

Hon. Mr. ASELTINE: I would like to have one.

The CHAIRMAN: Our witnesses this morning are the Ontario Retail Hardware Dealers Association. There was some question as to why they were called, why the committee decided to call them. There is no national Retail Hardware Association—I believe they do intend to form a national association very shortly—they represent a part of the retail trade who are very much interested in this matter of resale price maintenance. Now, Mr. Dunn, perhaps you will be good enough to introduce your delegation.

**Mr. Norman M. Dunn, Counsel, The Ontario Retail Hardware Association, called:**

The WITNESS: I am Norman M. Dunn, counsel for the association. With me here today are Robert W. Lamb, managing secretary of the association; Mr. Angus Firth, assistant secretary, a statistician in the offices of the association; next is Mr. Chalmers Gorsline, of Collingwood, a retail merchant; and Mr. Richard I. Blain, who is another practising merchant in Brampton. He is in his own business in Brampton. I will be saying a word about this later, but in view of the importance of this question of resale maintenance to this organization we have called upon the services of a consultant, a gentleman who has had a great many years of experience in marketing, and it may be that he will



have to answer some questions later—Mr. George Hougham, who now lives in New Westminster, British Columbia, and he is here in the capacity as a consultant of our association.

The CHAIRMAN: Thank you, Mr. Dunn.

The WITNESS: We are not all going to make speeches, but we wanted to render every assistance we could.

The CHAIRMAN: We are gratified that you brought so many along with you, Mr. Dunn. The procedure has been for the spokesman, or any other member of your group, to make a short summary of your brief, and then the committee counsel will start an examination, and after that the committee members will follow up. If any question can be better answered by any other member of your group, he may do so.

The WITNESS: Thank you.

Gentlemen, first of all may I draw attention, for the purpose of correcting a rather unfortunate typographical error that crept into our brief. On page 32 of the brief, one little letter added, which makes it sound rather different—"equality" instead of "quality"—"debasement of equality", we would not want that to happen. There are one or two other minor typographical errors, which I do not think are material.

Mr. Chairman, the association, as has been stated, is called the Ontario Retail Hardware Association, and it represents the vast preponderance of the Ontario dealers. 96 per cent of the Ontario dealers are among its members, and a large number of members are from other provinces, with the exception of British Columbia, in which province there are very few members. So that, overall, the association represents 40 per cent of the membership of the retailing trade throughout Canada. Now, as you gentlemen are aware by now, the hardware trade is an important part of the retail trade in Canada. The 1950 records show \$192,000,000 worth of business done over the counter of hardware stores. Unfortunately, there are no figures in Canada to show what percentage of that is done by independents and what percentage is done by chains. Sometimes we find things like that in the American figures, but the Dominion Bureau of Statistics in its wisdom—I think because of the small number of chain stores in Ontario—does not make a practice of separating them, because there are only two chains in Ontario, Aikenhead's in Toronto and Mills Hardware in Hamilton, so they would only be revealing internal records if they did. However, as you can see in the brief, it has been estimated by a competent economist in the United States that in this type of business approximately 95 per cent of the retail trade is handled by independents.

Now, gentlemen, I am going to be as brief as I can, but I do want to stress some things. I understand, Mr. Chairman, I am not to read the brief and it is not necessary, of course, but I may beg your leave to read a sentence here and there. I would like to emphasize that something fundamental to our position here is that we have certain characteristics in the retail hardware business which do not apply to very many other businesses. You have had an opportunity of reading the brief, it is 32 pages, but it is double spaced so it is not so bad. As you gentlemen will see, on page 4 reference is made to the economist in the United States who classifies the characteristics that lend themselves to the independent retailer. First of all he has a large inventory; secondly, he has a wide range of stock; thirdly, there is a great measure of personal service; fourthly, there is a very slow stock turnover and, fifthly, there is a high degree of technical knowledge involved at the point of sale. Those things are not involved in a great many other businesses, for instance,

dress goods has no technical knowledge involved, in the food business there is no technical knowledge involved, but in the hardware business it is very different.

In addition, as I have indicated in the brief, our people perform a service to the individual coming into the store, which the hardware merchant never gets paid for. He counsels his customer on various ways of maintaining his property, he explains new products coming on the markets, insulating material or a new type of tool. There is a great deal of special service rendered by the retailer. These are all things that underlay the position we take as being vitally interested in resale price maintenance. It is shown for your interest on page 6 the extent of competition that exists as between retailers and there is a little table there. You will notice even in the smallest town there is a very high degree of competition, there is a high degree of competition in even the smallest community, and that is something we like, and it is interesting we think to note that has been the case.

Now, gentlemen, you probably realize from looking at the brief that we seek to set out certain positive things in the brief, what resale price maintenance is, what it does for the hardware people, and we take a negative position in the latter part and say, "Why is there objection to resale price maintenance?" We have attempted to list some of the objections highlighted in the well known MacQuarrie report. The first main thing in the positive part of it is, what is resale price maintenance? Now, gentlemen, I do urge you to give consideration to the definition that was arrived at by the Federal Trade Commission in the United States. The beauty of that definition is, as we lawyers say, it is both inclusive and exclusive, it includes everything that resale price maintenance is and excludes things that really are not. Resale price maintenance is the marketing policy under which the manufacturer as owner of a commodity identified by brand, trade mark, trade name, copyright of patent, places restrictions on the price at which that commodity shall be sold by purchasers and sub-purchasers.

Gentlemen, I think it is important to bear in mind it is restricted to branded merchandise and is neither a minimum nor maximum. There is a tendency creeping into these proceedings for speakers to indicate it is a minimum. I urge you to realize, gentlemen, it is both the minimum and maximum selling price.

In answer to question some of my colleagues who are in the business will probably tell you that that functioned to keep prices down through the scarcity periods following World War II. There was a time you could not buy a Mixmaster in the city of Toronto for love or money and when one came in it was sold to somebody on a list. It was sold at \$59.50, or whatever the price was, and we all know that short of government control the dealer could have got almost any price for that Mixmaster.

So I urge you to realize, gentlemen, that price maintenance is not limited to a minimum price, and I urge you to consider that Federal Trade Commission definition.

Now, on pages 7 and 8 I attempt to show briefly the history of this practice in the United States. I am not going to take time to go into that in great detail but I want to urge on you this fact, which I think is very clear from all the literature on the subject: that resale price maintenance was not a brain child of some clever lawyer on some particular date who said: Here, we are going to do this; and this is going to clear up all our problems.

I suggest to you it is a businessman's solution for a businessman's problems. These problems were very acute in the United States in the '90's and towards the turn of the century. With the sudden growth of manufacturing and marketing procedures, a situation developed where many branded products were really being, as some people have said, "kicked around"—and very serious



trouble ensued. There was a gradual growth of this practice of stipulating prices at which branded products should reach the consumer.

Gentlemen, it is common knowledge to everyone who has been sitting here for the last weeks what happened in the United States. The American courts decided in their wisdom, because of the anti-trust legislation in the United States, that even a vertical price agreement between manufacturer and distributor was, according to their minds a trust—and "trust" is a word that is bandied around in all American writings. The courts decided it was a trust and price maintenance became illegal in the United States around the turn of the century.

Then what happened? The chaos that followed in the marketing of branded merchandise resulted in a positive demand from the public for legalizing this practice. They adopted a phrase down there which I think is not a bad one, although I do not know that it is the best one. They call them "fair trade laws" and, as you all know, in 1931 the first fair trade law was introduced in the state of California.

Now, I do not think we are concerned here that it was very largely tied up with the pharmaceutical industry—the pharmaceutical industry was one which had felt this competition at the turn of the century—but at any rate we have this first statute in California and then, following in very quick succession, you had it in 44 other states. So, you have 45 states with fair trade laws.

Then you had the Miller-Tyding Act which introduced fair trade legislation in inter-state trade, provided that it did not go into nonfair trade states.

I suggest to you, gentlemen, for your earnest consideration, that Canada, sitting here beside the United States, should not go back to 1900 and start all over again. The United States have made a lot of mistakes in legislation; they have made a lot of mistakes in their industry and in their business; but they have gone through the pains of this cycle—first of having price maintenance legal, then having it made illegal, and then the horrible legislative process of having it legalized again over a period of years—in order to get back to where they were in 1890 when the Clayton Anti-Trust Act was passed.

I suggest to you, gentlemen, that it is not reasonable and is not sensible for Canada, sitting beside the United States, to go back 50 years and start that procedure all over again. As I have told you, it was a natural economic growth; it was not something dreamed up in a hurry; and it was something that businessmen did themselves.

I mention in my brief one product and I am going to take a second to mention it here. Everybody in this room remembers the Ingersoll watch. I am younger than some of you in this room but I remember it vaguely. The Ingersoll watch was probably the best known product on the North American continent. Everybody knew that you could go into a store and get an Ingersoll watch for \$1—and everybody knew what they were getting.

The story of the Ingersoll watch is the story of the beginning of price maintenance in the United States. Certain stores, certain types of merchandising units, thought that the Ingersoll watch would be a perfect opportunity to get people into their stores so what happened? They first sold it at 79 cents. That was just fine—so, having sold it at 79 cents they said: Let us sell it at 49 cents. People were trooping into their particular stores to get those watches and, incidentally, they probably bought some other things at the regular price.

What happened? Well, jewellers, hardware stores, corner stores all across the United States who had previously been buying Ingersoll watches could not possibly re-order Ingersoll watches when they were being sold in other stores for 49 cents or even 79 cents. So they simply did not re-order Ingersoll watches.



And what happened? The few stores that had been selling them at 79 cents had a hey-day; a few very lucky people got a good watch for 49 cents—and the honeymoon was over, gentlemen, in a very few months—and the Ingersoll watch disappeared from the American market.

In the past 10 or 15 years—more than 15 years ago after the Ingersoll watch disappeared from the market—the only watch that you could buy if you were going to give your boy a watch when he came out of school would cost you \$2 or \$3. As I say, that showed how price maintenance worked, and how it grew naturally in the United States.

Now, gentlemen, I hasten on to discuss how much price maintenance there is in the retail hardware business. I have seen from reading your proceedings that there has been some difficulty, as there was with the MacQuarrie commission, over just how much price maintenance we have in Canada. We Canadians are not so statistically minded as they are in the United States. At least that is the way I found it when I started to prepare this brief. We maintain, as one of the services that our association renders to its own members throughout Canada, a statistician. That is Mr. Firth whom I introduced to you whose business is to calculate mark-ups according to traditional experience in the hardware trade. In other words—Mr. Thatcher will correct me very quickly if I am wrong—there are certain things in the hardware trade which are for sale to the public and other things that are channelled to trades, like roofing. I do not know this but I think on roofing the traditional mark-up is very much less because it has a very small market generally. So, with that experience across the board our organization maintains the procedure for calculating the profit inherent in the trade and the advances which come about from time to time.

Our practice, as Mr. Firth will tell you if you ask him, is from time to time to check three wholesalers. We take the lowest price of the three wholesalers and calculate it at different rates resulting in different kinds of profits which experience has shown will enable a hardware dealer to stay in business and make an honest living. These vary from article to article. Now, we distribute them as a feature of our service. Now, this price book is a big, formidable thing and it carries 26,500 items.

Now then, in a sampling—I think you gentlemen will know what I mean when I say sampling—we did not go over the entire 26,500 items but we took a good many items and sampled them, and our Mr. Firth came up with the conclusion that 2,094 items in our price book were subject to price maintenance. But there are 2,094 where the manufacturers say: "here, the price is so much", and where the manufacturer would probably register an objection were the retailer not to adhere to it. It figures out at 7.89 per cent. In dollars and cents it is more difficult but a survey of our directors, who are all in the trade, all engaged in marketing hardware at retail level, indicates that it is 10 or 15 per cent.

Now, gentlemen, that is not any more than the MacQuarrie commission report stated. They said 15 per cent. Dollarwise it looks like 10 per cent to 15 per cent, and I do suggest that it is interesting to note that the British committee—I am going to refer to it several times here, gentlemen—you gentlemen may have examined this interesting report which took, I believe, over two years of hearing witnesses before it produced this. We are going to say later on that this document was not used at great length in the findings of the MacQuarrie report.

The British committee in 1949 found as a fact from their investigation that it would be from 5 to 10 per cent. That is on page 10 of my brief, gentlemen; a short reference to page 69 of the British proceedings.

Now, gentlemen, where does that leave us? As the MacQuarrie report stated: "if it is as small as that it is not of interest at the government level".

Now, there is more to it than that. I have given you the five characteristics of the retail hardware dealers. These things which are price maintained, we find from investigation of the hardware merchants, have a tendency to be the things that are being bought repeatedly. Other things that are bought very rarely such as a hammer or trowel or mason's level have not the same tendency to be price maintained. That is, the bread and butter items, the stuff that is being sold on more or less general demand has a tendency to be price maintained and that is why it is so important to us and I say to you gentlemen that the fact that it is only 7·89 per cent does not suggest for one moment that this committee should not deal with it because of the unique position that it has in this particular business, and I suggest to you that the only way that you can get a bird's eye picture of price maintenance in Canada gentlemen, I say with all due respect, the only way you can get the overall picture is to take specific cases and say: "how does it work here?" You will have to say: "this is only 7·89 per cent of the goods, then how does it work in another industry?" and then, I suggest that the MacQuarrie commission, when they said that it was too small, and that it did not interest the government, they did somewhat miss that phase of it.

Now, gentlemen, I was going to take a few minutes to refer to the British committee. I notice that you gentlemen have looked at the excerpts from the British committee which appear in my brief at pages 12-14. They made surveys from various angles. They surveyed and interviewed manufacturers, they interviewed distributors and they interviewed consumers and they had quite a lot of consumers there.

Now, in that paragraph, which I am not going to read at this time, I suggest to you that those findings of the British committee are worthy of the greatest consideration. They stressed this importance of technical skill which is involved at the point of sale. They stressed the fact that there is a slow turnover in some of these items. There are factual problems, gentlemen, that affect our industry and may affect other industries. It is recognized that many have to make some stipulations on price. If a salesman comes in and says: "How many do you want of these tack hammers, for instance" and the merchant buys a quantity of tack hammers it may be months and months before they are sold. He has got to buy in relation to the manner in which he can sell. We must recognize gentlemen,—I regret to say that it has become unpopular, this idea of being in business for profit—we must face the fact that everybody who is in business is in business for a profit. I think that the Minister of Finance recognizes that fact. Now, gentlemen, these men have got to buy things so that they can sell them at a profit, and they want to know that after they have loaded up their shelves with, say, 20 gross of tack hammers, that the price is not going to be all shot to pieces within the next month or two. Now, gentlemen, at the risk of being censured for reading too much, I am going to read the final conclusions of the British Committee, which are not very long and which start at the bottom of page 16. May I just, before I do that, say that the position in England, as I understand it, is very similar to the position in Canada, where price maintenance has never been illegal, it has always been recognized as legal under the common law. I will tell you in a minute—there was a case in England back in 1783 when it was definitely approved and it has never been made illegal by any statute, so in 1949, when the British Committee was considering this matter, they were in the same position as we are in here. Here is what they said: "We take the view"—now then, gentlemen, I am not taking the time of the committee to read a lot of the other things the British report said, but I would urge



every member of this committee to get access to the report of the British Committee and read a lot of it. I do not think there is a word in that report that will not be helpful to this committee. Now, this is the final conclusion of all their findings:

162. We take the view that the manufacturer of a branded article remains responsible for the quality of the goods sold under his own brand; he cannot, therefore, be indifferent to the terms on which his goods are sold to the public. Our evidence has shown that well-known branded articles are particularly liable to be used as loss-leaders by distributors and we are satisfied that their use in this way has not brought any permanent advantage to manufacturers, distributors or the shopping public as a whole. Resale price maintenance offers a convenient means of protecting brands against misuse by distributors in this or other ways.

Paragraph 163, gentlemen, is their recommendation:

163. We recommend that no action should be taken which would deprive an individual producer of the power to prescribe and enforce resale prices for goods bearing his brand.

Now, gentlemen, there is the final conclusion of two years of investigation by a learned committee in Great Britain. I am going to refer in a minute to the parallel findings of the Federal Trade Commission in the United States. Now, gentlemen, we come to the negative side of this proposition, as we see it. The heading we have here is: "Has resale price maintenance any tendencies adverse to the public interest?" Now, this is a question that interests every member of this committee because we are all concerned, and I say "we" advisedly because we are marketing to the public and unless we satisfy the public we are just out of business, so we are all concerned with the public interest. Gentlemen, my study of this subject has revealed no organized opposition to resale price maintenance from manufacturers' groups, dealers' groups, or even consumers' groups in any formidable way. Talk to the man in the street. I have made a little one-man survey myself in the last couple of weeks and I find that they will tell you we do not want manufacturers keeping the price up. You ask them if they understand price maintenance and you find they do not understand it at all, they just have a vague idea that somebody is making the price higher than it should be and, therefore, that is bad. Now, that thought runs all the way through the writings of anyone I have been able to find who opposes price maintenance, economists, legislators, and judges, if necessary. Gentlemen, that situation is acute in the United States. You have Washington—and I am saying this with the greatest respect to our friends across the line—you have in Washington a fixation about trusts. Anything that looks like two people discussing the price of a thing, they say that is a trust and that is bad, that is contrary to something in the constitution, at least contrary to the public interest, and that is why the United States Supreme Court went so far—went further than Mr. McGregor said here or would think of doing—they said, under the Clayton Act a vertical agreement would be a combine. You could be a combine even when it is only one manufacturer—such is their fixation across the line. Any two people discussing a price, unless it is a government board, any two individuals in business discussing a price, they call it a trust and that is all. That runs through all their writings. You will find economists who will say "price maintenance is contrary to the public interest" and you will see that phrase repeating itself. Now, gentlemen, the same thing is beginning to show itself in this country. We are getting just a little, not as much, but just a little of that idea that because two people are discussing price, even though they are not on a horizontal basis, that it has a tendency to provide, as I said in my brief, a breeding ground for a "combine," which is the word



we do not like in Canada. Now, that is one of the things I was sorry the MacQuarrie report did not clarify. They say, as one of their findings, that resale price maintenance agreements make it easier for manufacturers openly or tacitly to enter into a combine. Our brief is quite clear. We do not like combines any more than this committee does. We believe they are contrary to public interest and they have been so held by the common law back to 1783. Combines legislation did not start in 1890 with the Clayton Act in the United States, and it did not start in Canada with our Combines Investigation Act. It went back to 1783, the common law idea, which was this, that any manufacturer could fix the price of his goods to the person he was selling it to, but if a manufacturer tried to fix it with another manufacturer that is contrary to the public interest. It is as old as that. We have this type of thinking creeping up in Canada now, that because a thing might make it easier for people to get into a combine, therefore price maintenance is bad. Now, gentlemen, you had before your committee here the other day a gentleman whom we all respect as a civil servant of this country, one who made a great contribution to the legislation of this country and who is now retired, and he came and was heard, and I have read with a great deal of interest the remarks he made, and, gentlemen, I am going to refer you to just three things that he said as indicative of this type of thinking that is creeping into Canada. On page 390 of your proceedings, Mr. McGregor used these words: "The extension of the practice in recent years has been alarming." Now, I am not going to read a whole lot. You have all read it. He elaborated to some extent, but I suggest to whom is it alarming? It is alarming people who think somehow it is going to make it easier for people to band together and form a combine. My answer is this, the function of the legislature is to make the Combines Investigation Act fit the facts, the modern economic facts in Canada. If it is not strong enough at the present time let it be amended, but let it be amended along the traditional common law lines. Do not let us tamper with the Combines Act because it is open to people to quietly do something which we could not prove under the present Act is a combine but which we think is a combine and therefore make other things illegal. Gentlemen, if there are types of agreements between manufacturers that are not caught by the Combines Investigation Act now, we say let the Combines Investigation Act be amended, let it be improved, put your law officers of the Crown at work to close the gaps, but keep the pattern, which is against horizontal agreements; make it as tough as you like but do not change the pattern which we have had since 1783. Now, you have this gentleman saying it is alarming. But he does not elaborate. Then on page 395 of the Minutes of Proceedings he said:

As the very purpose of resale price maintenance is to prevent sales below the minimum price established, it is obvious that the effect is to keep prices, right across the board, higher than they would otherwise be.

That is quite an incomplete statement on price maintenance—"it is obvious that the effect is to keep prices, right across the board, higher than they would otherwise be." Gentlemen, it is that word "obvious" I object to. Here is a witness coming before this committee saying something is obvious and not giving any facts. There are no facts to substantiate that. As a lawyer I am also very hesitant in saying that something is obvious. This word "obvious" appears again on page 396, where he said:

First of all, resale price maintenance is a system that is obviously designed to prevent, and which does prevent, reductions in retail prices.

Now, gentlemen, do any of us know of any reductions in retail prices in the last five years? There have been very few. We will show you in our brief

that one of our price maintained items has gone down a little bit but non price maintained articles have all gone up, yet Mr. McGregor says it is obviously designed to prevent, and does prevent, reductions in retail prices. I suggest, in fairness to this committee and this country, you should not put your approval on changes in legislation on the ground of the opinion of somebody that it is obviously contrary to the public interest. I suggest to you that you should have proof, and I am very glad that we have a little statistical information that may help you.

I promised to tell you about that 1783 case. It is not in my brief, so I will just refer to it. We have a couple of lawyers on this committee and they might like to talk about it.

The CHAIRMAN: We have more than a couple.

The WITNESS: A couple, well I will use that like the baker's dozen.

Mr. CARROLL: We have a couple of good ones.

The CHAIRMAN: Someone has remarked we have a couple of good ones.

The WITNESS: It was Lord Mansfield, in 1783, in the case *Rex v Eccles*, 1 Leach 274, who said:

Persons in possession of any articles of trade may sell them at such prices as they individually may please, but if they confederate and agree not to sell them under certain prices it is conspiracy.

Now, gentlemen, there is your combines law back in 1783. It is the common law and I say do not change it.

Mr. CARROLL: What is the citation?

The WITNESS: 1 Leach 274. It is also reported in 99 E. R. 684.

Then, in the MacQuarrie report that I have been speaking about, on page 17 they say:

Resale price maintenance facilitates and makes more effective horizontal agreements (open or tacit) among manufacturers.

I say, gentlemen, if there are horizontal agreements, I do not care if they are open or tacit, let the Act be amended.

*By Hon. Mr. Fogo:*

Q. Is that statement correct that you just read?—A. I am quoting from the report on page 17.

Q. You are reading it, but are you saying it is true or untrue?—A. I am saying that it is a very bad policy on which to consider legislation, to make something illegal because it helps something else.

Q. As a statement of fact is it true or untrue?—A. I would say it has not been proved. In my investigation I have not been able to see any suggestion that it is an integral part of horizontal combinations other than in the writings of gentlemen at Washington, D.C., who have this same fixation about trusts. They will say the very same thing. They will say price maintenance is bad because it provides a breeding ground, makes it a little easier for the big boys to get together behind closed doors. That is not the way to take the thing. If the big boys are getting together behind closed doors, let the Act deal with them but do not make something illegal which has been perfectly legal since 1783 and which had to be legalized at some trouble in the United States. Now then, gentlemen, we come to a very important question which is raised in the MacQuarrie report. This is all part of the negative side of my brief.



Resale price maintenance does not mean high prices. Gentlemen, we are all interested in high prices. Let us start from what the MacQuarrie report said on page 19:

... the general level of prices is higher with resale price maintenance than it would be if competition existed.

Now, that is a statement, let us say, that is a finding that was not elaborated; they did not say we investigated this, that and the other thing and for various reasons it was higher. Let us see what other investigating bodies have found on that. On page 20 of our brief you will find an excerpt from the findings of the Federal Trade Commission, which I am sure you also had thrown at you by Professor Fuller, or at any rate I think that group emphasized this, and this was important so I want you to hear it again. The MacQuarrie report, as you will recall, quoted five findings of the Federal Trade Commission as to what happened when price maintenance went into operation. You see, we have this very interesting situation in the United States that it is the only country in the world I know of we can study price maintenance going into operation, and I say we should study it with great interest. You had in the United States a case where there was no price maintenance at all, and then you have price maintenance legalized, all within a matter of a couple of years. I know some of you gentlemen will be saying that the Bureau of Education on Fair Trade had some axe to grind. I do not think the Eli Lilly had any axe to grind. I have studied the Eli Lilly digest and I have seen what happened when price maintenance came in. The MacQuarrie report quoted these five findings. They all had to do with what happened when price maintenance was inaugurated. They pointed out that prices were increased in some stores and were decreased in the independent stores, but unfortunately, and I think it is most regrettable, the MacQuarrie report stopped at the fifth finding and did not copy in the very next one, and here is what the sixth finding says:

6. The manufacturers of the price-maintained brands of drugstore items covered in this study generally named minimum prices that were within the range of prices actually charged by their large-volume customers just prior to the time they placed their trade-marked products under minimum resale price contracts.

Now, that is all I have been able to find in the time I have had at my disposal. There is only one of these books in Toronto and Mr. Fuller had it and I couldn't get it. This one is a report of a committee on resale price maintenance presented by the president of the Board of Trade to parliament by command of His Majesty, in June, 1949.

The CHAIRMAN: May I point out to members of the committee this report is available in the library and in the committee office, as is the British Hansard for 1951, and the last government White Paper.

Mr. FLEMING: Are there enough copies for circulation in this committee?

The CHAIRMAN: I have inquired of commission counsel and in the library what demand there has been and I may put it this way, they tell me there has been remarkably little demand.

Mr. FLEMING: Probably that is because we are snowed under with all these briefs which have been submitted.

The WITNESS: Gentlemen, you may have difficulty getting it to read but I commend it to you. It is 222 pages of close printed and carefully documented material. Incidentally they had three units of consumers, three big women's organizations appear before them. Now, gentlemen, I have read this paragraph from the Federal Trade Commission report and the finding of the commission in



the United States. Admittedly it was the drug business they were investigating but they found as a fact in their investigation that in price maintenance the general tendency was that independent prices came down, the large volume prices remained pretty much the same and it is quite possible some of the cut-raters may have had to increase their prices, and I have no doubt Macy's did.

*By the Chairman:*

Q. Are you acquainted with the situation in Newfoundland?—A. I confess I am not, sir. Now, gentlemen, the parallel findings of the British committee and the United States findings, supplement the vacancy in the MacQuarrie report. Here is what the British committee found on the question of mark-ups, and this is page 14 of the British report, "On the whole the margins allowed on price maintained goods appear to be lower than those taken on free price goods. The circumstances vary, however, from product to product and from trade to trade. We do not attach any great significance to the fact that margins on branded and price maintained goods—especially on well known brands—are generally lower. Indeed we should have been disturbed had this not been the case, for such goods do not ordinarily require inter alia the same sales effort as unbranded goods. There is therefore no comparison between the two classes of trade."

You have those two parallel findings that price maintenance does not necessarily push prices up. We attempted to find out just what has happened in Canada. We took a number of hardware items, some fast moving, some slow moving, and through our statistical department we charted the price movement on these items from 1939 to 1951. This is table No. 1. The first table No. 1 is a very small one on page 6. This is table No. 1 on page 23, and it runs over onto page 24. We have taken, first of all, paint, which is a fairly fast moving item and the mainstay of every hardware store. I have taken a product price maintained and one not price maintained. We could not get the average from 1935 to 1939, to tie it in with the Bureau of Statistics figures, and if there was more than one price in 1951 we simply averaged them. Mr. McGregor says statistics cannot be relied on because they can prove almost anything, but I assure you, gentlemen, every product I asked Mr. Firth to investigate is included in my report.

Now, I am not going to read all these figures, but you gentlemen who have looked at it will see that the price increase on the three price maintained paints varies from 62·9 to 77·4. These are retail prices I am referring to. The non-price maintained item, which is a competitive item, increased to 83·7 in the same time. I also showed the mark-ups which are in percentage of retail selling price. Mark-ups are very often related to the dealer's cost, but for the purposes of my thinking I like to think of it in terms of what the customer pays. As Mr. McGregor says, I come here as a consumer. There are some other items, flashlight batteries went up only 30 per cent, waxes went to 15·4 per cent and you will notice the mark-ups on waxes are very small. Electric light bulbs is one I like because I see it went down 2 per cent in the years from 1939 to 1951. The mark-up there is 25 per cent. Now, in the next stage we have cooking utensils and there are two items there that are price maintained, one is a certain kind of double boiler which is up 80·4 per cent, another kind of double boiler went up 74·2 per cent, and another kind of double boiler which is not price maintained went up 106·2 per cent. Again the mark-ups in all three are almost identical.

Now we get into hand tools and we find in the hardware business hand tools are very rarely subject to price maintenance and we find a great variety of price increases. The last one is hand saws which went up from \$4 to \$7.01. Hammers went up 112·17 per cent, planes 113·1 per cent, and the general run of them is substantially higher.

Q. Weren't these the things you said were slow moving and were not price maintained?—A. Yes, these have a tendency to be slow moving; these things are technical things.

*By Mr. Fulton:*

Q. A hammer isn't a very technical thing.—A. No, it would be technical to me, though. I think I talked about tack hammers.

The CHAIRMAN: No, you talked about ordinary hammers.

The WITNESS: Gentlemen, I come here as a consumer and a lawyer and I may have committed many sins of omission and commission, but I have to rely on this huge delegation I have here to correct me where I have made technical mistakes. I have shown also on page 24 the national price trends published by D.B.S., which are the September, 1951, figures. You will notice commodity prices across the board went up 121 per cent, and the nearest subdivision I could get to hardware was home furnishings, maybe that is not the right category but it went up 99.1%. I want to be the first to say this is only a very small sampling, and I know very well gentlemen here can say what about this or that or something else. This is only an indication of what I think your committee should do. I do not want Mr. McGregor to be called back this afternoon and say I attempted to demonstrate something from twelve or fourteen items. Nothing is further from the truth.

Mr. BEAUDRY: I don't think there is any danger of that.

The WITNESS: I do say in my investigation I asked my colleagues to get me the price trend on twelve or fifteen items and curiously enough they support the rest of the proposition. They support the findings of the Federal Trade Commission and the British committee.

Now, there is an appendix, and I am not going into it in detail, but I thought the committee would be interested in seeing it. I may say this information was gathered at a time when we were not thinking of price maintenance as a problem at all; it was gathered as a service to hardware dealers so they could see how they were doing on their pricing. That is what we try to do for our members, so we made this investigation in seven towns and you will see we have averaged it. Again, gentlemen, these are retail prices. I urge you to realize these are based on the selling price of the articles. This is the type of thing we give to each of our members for a small fee and it contains pages and pages. In the final column on all these sheets of appendix A you will see the mark-up our statistician suggests. There is a little variation and it has occurred to me it may be of some interest to you to see how these mark-ups vary from item to item, and I say again there is no attempt to differentiate between price maintained goods and free price goods. This was a survey made last May and there was no differentiation made at that time and there has been no attempt since to make a differentiation. I would love the opportunity of going through the whole of appendix A and finding how many were price maintained and then going back and seeing what happened to them since 1939. You did not give us too much time and we have been working rather hard to get something for you.

Mr. FLEMING: How long would it take you to prepare that information from the survey?

Mr. FIRTH: I think we could come up with partial statistics in a fortnight, but that is a terrific job.

Hon. Mr. GARSON: Even this would be a sample.

The WITNESS: This would be a very representative sample.

Mr. HEES: A very worthwhile sample.



*By Mr. Fleming:*

Q. Do you think it would be well worth waiting two weeks for?—A. I would love to see it done. I think it would be of the greatest help to everyone. It is something that has never been done in Canada before. I may say, gentlemen, when the annual convention of our association comes up in January next I am going to urge them to work out ways and means of getting these little independent people to keep records that will be helpful.

*By Mr. Fleming:*

Q. You seem to have about 300 units on these sheets on appendix A.

The CHAIRMAN: I think Mr. Dunn is almost through and I think it is quite a compliment to their association that they should have prepared such an extensive brief as they have.

The WITNESS: I think perhaps it might simplify things if I finished my statement, and I will try to be as brief as I can. The next subject, and I think a subject that has been bandied around here as much as anything else, is resale price maintenance does not restrict competition. You will be interested to know there is one thing in the MacQuarrie report with which I heartily agree and they used a phrase that fascinated me, "social control of prices."

I am entirely in favour of social control of prices but don't any of you gentlemen ask me: Yes or no—I see that Mr. Phelan has gone out.

The CHAIRMAN: He will be back.

The WITNESS: Do not ask me—yes or no? Because you have got to define these words.

I am going to try and forestall a question by giving you something I looked up before I got on the train last night. I thought I would find out what the word "social" means. All I have at home is a Concise Oxford Dictionary which I think is a good one—

The CHAIRMAN: It is a good one.

The WITNESS: And in the office if my secretary says she got something from the Concise Oxford Dictionary I will go along with it.

It defines "social" as: "Not fit for or not practising solitary life".

The CHAIRMAN: A combine.

Mr. FLEMING: It sounds like members of parliament.

The WITNESS: Gentlemen, I may not forestall a question but I put it to you this way. You talk about the social control of prices and I am all for it, because we live in a society—which is social living. We do not live in a socialist sphere necessarily—as that is a political term. Some parts of the world do live under the socialistic regime but we do not have that—and it is up to parliament to decide whether we ever shall.

The CHAIRMAN: Up to the people.

Mr. FULTON: The people decide that.

The WITNESS: We live in social circumstances and we do not live alone. That being the case, we must govern ourselves in accordance with the interests of other people. That is what social control is.

I just thought of a little example here. You talk about freedom, and there has been so much said about freedom of competition and freedom of enterprise. The word "freedom" is being used all the time. Somebody says to a witness: Do you believe in free enterprise? But gentlemen, if anybody asks me that question I am not going to answer until I define both "freedom" and "enterprise" and by the time I have given the definition of "freedom" and "enterprise"



there will be no time for questions—which will be disastrous. Therefore I hope that question will not be asked.

However, I have a little example here which I think is an answer. It is a very homely example of freedom in our social form of living.

It is, that in front of my home in Toronto there is hanging on a lamp post a sign that says "No Parking".

Hon. Mr. BEAUBIEN (*Joint Chairman*): Do you ever get a ticket?

The WITNESS: Oh, sir, perish the thought.

Mr. FULTON: Do not ask him that?

The WITNESS: Do not ask what happens if I do get one—that would be even worse.

Gentlemen, that is an infringement on my freedom which is in the social interests. There are a lot of people going back and forth on my street. I live right near Avenue road and St. Clair. In the old days, when the farm went up to the King's Highway it was ours, but now when we live in congested areas it is not ours any more. It is Mr. Fleming's, and other peoples'—going back and forth downtown on my street. Now, that sign is to accommodate Mr. Fleming and other people, and they do not let me park in front of my own house.

That is the type of social interference—

Mr. FLEMING: I object, I do not drive on that street—or park.

The WITNESS: You had better not park. That is one of the infringements on our freedom which we have to endure to live in a social community.

Now, I am not going to get into a speech on freedom of enterprise but I just want to forestall questions. I say that price maintenance is social control of prices and that is why I like that word—I can adapt it to my thesis.

Hon. Mr. GARSON: Social control by whom?

The WITNESS: I cannot answer that in one word, sir. Do you want me to answer it fully?

*By the Chairman:*

Q. I think all of us know the answer because we are all parliamentarians? —A. As to how I should answer that?

Q. No, as to what the answer is?—A. I submit that is the purpose of your enquiry here.

Q. The answer to Mr. Garson's question is: by the government; by the will of the people?—A. Yes, but that is not the answer to Mr. Garson's question. Mr. Garson wants me to say that it is social control by the manufacturer.

Hon. Mr. GARSON: Certainly.

The WITNESS: That is what he expected me to say if I answered it in one word; but it cannot be answered in one word.

Well, we have got into this thing and we are going to finish it.

Mr. HEES: Attaboy!

The CHAIRMAN: I am moving you down on the list, Mr. Hees, and he can take some of your time.

Mr. FULTON: Mr. Garson asked a question.

Mr. FLEMING: As the matter has been raised let the witness give his statement.

The WITNESS: I am sorry that I did not answer your question—I am not deferring to Mr. Garson because of his position as a member of the cabinet, but he has raised such an interesting question that I do not want to go away from it; but I cannot answer it in one word.

The CHAIRMAN: The members here are obviously extremely anxious to start questioning you. I have no doubt but that Mr. Croll, Mrs. Fairclough, Mr. Thatcher, Mr. Hees, and others will be delighted to ask you that question and you will have ten minutes to answer.

Mr. FLEMING: We should clear it up now surely?

The WITNESS: Do not let me forget it, Mr. Garson?

Hon. Mr. GARSON: I do not think I am even on the list.

The WITNESS: Maybe Mr. Hees will put it on his list—but he has been moved down.

The CHAIRMAN: No, he is back in his old place.

The WITNESS: I say, very simply, that we have social control of prices—which has come about in this gradual economic development that I have attempted to trace. It is a type of limitation, and I am going to go right along with that. It is a type of limitation of the most careless type of competition there can be—if there was not some sort of social control of competition.

I am sticking my neck out when I say social control of competition. Mr. Garson will say that can only be done by parliament. Yes, at the final level.

However, I remember one thing from my study of economics when I was going to college. It had to do with the time when the North Atlantic shipping got its great impetus with the advent of steam. There developed competing lines. They were really in big business and they had big and expensive ships. They were competing with each other and they started cutting prices. They started, and each time one cut the other cut, and the result was that the entire North Atlantic shipping business was at the risk of bankruptcy, and the bottoms would have been gathering rust in Liverpool or New York if it had continued.

However, they got together and formed the North Atlantic shipping ring. I cannot go into the economics of it but I remember the matter from college. I do not know how it is controlled and, as there are different countries involved, perhaps it is by an International Convention. However, something had to be done for what Mr. Garson might very simply call free competition. I think that free competition has got to be defined. I would say competition careless of the social interests of others is the kind of competition which I do not think is in the public interest—competition which is careless of the social interests of other people.

Now, there is plenty of competition in the hardware business as there is in any other business, but I just want to put this one thing to you as an illustration. There is competition between the branded items that are distributed through retailers and there is very, very tough competition with private brands which are manufactured, custom made, for retailers.

I am not saying they are only made for Eaton's or for this firm in Vancouver who put the brief in today. It goes right down to the little drug store who sells cough remedy which is John Brown's cough remedy, the best cough remedy in Podunk Junction or some other place. That is a private brand.

Do not lose sight of the fact that the private brand runs the whole gamut from Eaton's right down to the little fellow who mixes something in his shop. Those are private brands, and they are competing.

I would like to go into it more fully but I must go on. However, I would leave with you the thought that a manufacturer who is the manufacturer of a brand name, in selling and in advertising, has got to think of the competition from private brands when he prices or gives the price that he thinks the product should sell for. He cannot do it indifferently to the others. That, I say, is social control of competition.

The CHAIRMAN: I wonder if I might interfere again. We are taking considerable time—

Mr. FULTON: Perhaps we should recall the witness.

Mr. HEES: What about this afternoon?

The CHAIRMAN: It is perfectly all right if the committee so decides. There are just two points. First of all I believe the members of the committee are very anxious to ask questions and also you have with you these gentlemen who are in the retail business and who I suppose are going to speak.

Mr. HEES: Can we decide now whether we will come back this afternoon?

The CHAIRMAN: We can decide that at one o'clock when we see what progress we have made with the questioning.

Mr. HEES: If we were going to come back this afternoon—and I think we would all like to come back, and I do not see how we can better spend our time—then this witness could carry on and nobody would be bothered about the time.

The WITNESS: I would like to spend about another fifteen minutes under my own guidance.

The CHAIRMAN: I think almost every point you are going to make is going to be asked about by members. Then, in the course of questioning you can get the point over. We have some very skillful men here to do that very thing.

Mr. FLEMING: We should know the point that Mr. Dunn would like to get on with.

Mr. FULTON: I do not think we should limit a witness in his presentation.

The CHAIRMAN: The understanding was that the witness was called for a summary of his brief. Other witnesses when called were told by the clerk, as was this witness, that it would be a ten minute summary. Then, there was to be an examination by counsel on the main points and then further questioning by members of the committee. I have been on many committees and I have not seen a committee where so many members wanted to question, but you have brought in things like the North Atlantic shipping ring which are not covered in your brief.

The WITNESS: No, but I do not think Mr. Phelan is going to limit me to a statement of claim.

The CHAIRMAN: I think Mr. Phelan is going to question you on your brief.

Hon. Mr. GARSON: We have entered into an arrangement with every other person who has appeared and they have acted in accordance with that arrangement. This gentleman knew what it was and it is not altogether unreasonable to expect the same adherence to the regulations here as in other cases.

Mr. HEES: If this gentleman can bring out points which may be so important as to change or alter the legislation you are proposing is not that proper?

Mr. FULTON: In the witness's brief there is this heading "resale price maintenance does not establish a private system of law." The witness has been dealing with that under the general heading of social control of prices. The next point is that: resale price maintenance does not discourage economic efficiency.

Surely the witness is to be allowed to buttress his statements of principle.

The CHAIRMAN: Actually he would have saved time if he had read his brief.

Mrs. HEES: Nobody attempted to cut off Mr. McGregor and he was selling a government scheme.

The CHAIRMAN: Mr. McGregor was called at your request.

Mr. HEES: And I was very glad to hear him. I would have stayed for two more days, and I would liked to listen to this gentleman for two days. He is talking a lot more sense than a lot of people have talked for quite a while. All I am asking is that we decide now, right away, to come back this afternoon and let him go on talking.



Mr. JUTRAS: I do not think this is the time to decide.

Mr. HEES: Let him go ahead now and we will come back this afternoon.

The WITNESS: It is extremely difficult for me to rush through in the remaining minutes. I have not much left and I would like to point it out in the way I had in mind.

Mr. JUTRAS: Go ahead and finish what you have to say.

The WITNESS: It is going to be very difficult for me if I feel that every word I say is going to cut off a word which might come out of a very interesting question.

Mr. HEES: Let us come back this afternoon.

The WITNESS: I would be very happy to go on and then decide later whether questions remain that deserve—

The CHAIRMAN: Just go ahead.

The WITNESS: Now, I have dealt with the question of competition. Well—wait a moment—in that interplay I overlooked something. It is in connection with the question of competition and how it works out in practice. It is extremely difficult to phrase it sometimes just in a sentence or two.

I might say I have had some difficulty with it myself but I ran across an exceedingly interesting passage by a very well-known authoritative economist in the United States which I think points out better than I can say, or than most people can say, just the practical working of competition under price maintenance.

This is one of Mr. Nystrom's books. I have no doubt but what he has been referred to you before. He is now Professor of Marketing at Columbia University and, at the time of writing this—in 1915—price maintenance was a very hot subject in the United States. I ask you to bear in mind the date of the book—it is not an obsolete book and he has written other books since—but it was written when price maintenance was a very hot subject in the United States.

In three little paragraphs here, which unfortunately were not included in the brief, I think he answers the question raised under the heading of competition.

For the record, this is from Mr. Nystrom's book, *The Economics of Retailing*, published at New York, in 1915 at page 17:

"Price maintenance restricts competition among the producer's own products, but in doing so it sets the energies of the producer free to work out the most economical system of distribution possible for his particular kind of goods. Where price maintenance does not prevail, the producer, without channels of distribution of his own, must not only struggle with his competitors among the producers, but also with the goods he has produced remaining in the hands of dealers. In other words, he has unwittingly become a second Frankenstein and must avoid destruction at the hands of his own creation.

We have seen that a struggle of this kind is likely to force a small manufacturer to cheapen the qualities of his goods and to attempt to get distribution by stimulating excellence; or to combine with some other manufacturer who has a selling organization reaching directly to the retailers, or to combine or sell out to some large selling organization such as a mail order house, department store, or chain store system or to surrender to a trust.

None of these results in themselves are desirable from the standpoint of the consumer or the public. The American people do not look upon the development of great business and commercial organizations with easy minds. Our experience with industrial combinations has not yet

clearly indicated the way to handle these concerns and brings new and difficult problems for our government to solve. That price maintenance does not prevent competition will be clear when one observes that there are a dozen well-known safety razors on the market, scores of varieties of corn flakes, several brands of grape juice probably hundreds of brands of shoes, several brands of collars and cuffs, dozens of makes of cameras, dozens of brands of hosiery, corsets, hats and so on; lines in which some manufacturers have maintained their prices for years."

This is the last sentence:

I am not an economist and I cannot answer some of the details of that but, in my humble submission, it seems to put over the point which I have discussed with my colleagues. That is where your private brands come in and that is where you have competition.

Now, I am very nearly at the end but I want to mention this heading on the matter of private brands and to say this one thing. Price maintenance gives to the independent retailer the same control, if you like to call it control, that the chain store or department store has with its private brands. Someone said yesterday that the Singer Sewing Machine Company sells their merchandise direct to the consumer all over the world. I cannot ask a question, but I would like to have someone here say whether that is social control of prices. With the Singer Sewing Machine Company selling sewing machines in Toronto there is no control over the price, and there is no suggestion that there should be—because they are selling in competition with White's, Swiss machines, Swedish machines—and they are all in competition. You can buy four or five kinds of machine. They do control their own prices and they do it locally. This committee cannot touch them. I say with the greatest respect, as I know that you are all legislators, that you cannot touch them unless you have some kind of price control—because they sell through their own dealers. The smallest corner hardware store in the smallest town or the biggest one, to have that continuity of price which the Singer Sewing Machine gets through their vast economic power, that the T. Eaton Company gets with its tremendous purchasing power and its tremendous slice of the retail business in Canada, and which other stores get, the A. & P. in the United States, price maintenance gives that same kind of continuity of price and it gives that same power to control prices, and it gives it to the little independent store.

Now, gentlemen, the next heading which this questioner mentions, resale price maintenance does not establish a private system of law. This has interested me very much since I started investigating this particular subject, because my investigation early produced a thought in my mind that resale price maintenance is nothing more and nothing less than a contract between two Canadian citizens as to the manner in which they shall merchandise a particular product. It is not something very elaborate, it is just a contract, and I am going to suggest, with the greatest of respect to the lawyers on this committee, that it may very well be a matter of doubt that the parliament of Canada has exclusive jurisdiction to control a contract of that kind. Now, I see Mr. Garson smiles and I realize immediately . . .

Mr. FLEMING: That doesn't mean anything!

Mr. HEES: That's nervousness!

The WITNESS: Thank you, Mr. Fleming. I hasten to add that I am deeply conscious of the extent to which power is taken under the heading of trade and commerce, how that phrase has been utilized to extend the jurisdiction of the legislature of which you gentlemen are all members, but I suggest that is not just a thought, it is something that should have very serious consideration by the House of Commons before legislation goes too far, because you are dealing



with a contract between two men, and I emphasize that by reference to the Duquette-Frosst case in Montreal. I have had great difficulty in translating that judgment. I tried to read it. From what I can see, having a bit of a translation, the whole approach to that question was an approach in which the learned judge, Judge Marier, applied the civil law of the province of Quebec to determine what was the effect of this contract. Now, I thought because there was a rigid contract in writing between the manufacturer and the dealer, and Judge Marier inquired into the effect of the Quebec Civil Code on that contract—that, gentlemen, is where I got that thought, that if Judge Marier found that, I have no doubt the Ontario Court of Appeal will do the same if any one of my clients in the pharmaceutical business is called in on the same sort of thing. It is a civil contract. So I throw that out as a problem, gentlemen. I do urge you not to think of this private law business. The British white paper, I think, coined this phrase of private law. Gentlemen, I urge you to realize that every contract that is entered into in the Dominion of Canada is the private law for those two people. It changes the common law.

The CHAIRMAN: In fairness to the British white paper—you have read that thoroughly?

The WITNESS: Well,—

The CHAIRMAN: The British white paper is not referring to private law in that sense. They found that there was a price ring inflicting fines on a retailer. That is what they meant by private law.

The WITNESS: Yes, but the MacQuarrie report adopted their language of a private law and said there was a tendency to set up a private law and referred to the British white paper. Anyway, the phrase has been bandied around, gentlemen, and in a tone of voice that there is something sinister about a private law. Gentlemen, there is nothing sinister about a contract. For instance, Mr. Garson and I might enter into a contract for the sale of a house I own in the city of Toronto. I own it and he wants to buy it. That is our private law. It does not affect the other people of Canada as long as it is between the two of us.

*By Hon. Mr. Garson:*

Q. This is a very crucial point. Would Mr. Dunn say that before the passage of the Combines Investigation Act a private contract amongst manufacturers to fix prices was just a contract?—A. I would say that as far back as 1783 it was declared to be against the public interest.

Q. But apart from any prohibition which is contained in the law, it was just a contract?—A. Well, we have to define words again. Just a contract. Just a contract. It is a contract with six, seven or eight people, but it is still a contract. It may have ramifications, have affected other people.

Q. But apart from any prohibition that there may be in the law in relation to that contract, it is just a contract in exactly the same sense in which you are using it in that phrase?—A. I cannot say that, because a contract is a legal relationship which affects the rights of those two people. There are types of arrangements that the Combines Act sought to catch which I really do not think are contracts.

Q. I am talking apart from that. Supposing there is no Combines Investigation Act, and you and I agree that you will charge a certain price for your commodity and I will charge a certain price for my commodity, and it will be the same price. That is just a contract?

Mr. FLEMING: It is not enforceable under the civil law in view of that decision of 1783.



Hon. Mr. GARSON: I am speaking on the assumption that there is no prohibition in the law against such a contract. It is just a contract?

The WITNESS: May I say this, that in the case that you have put I would say there is a contract for which there is no consideration, therefore it would not be really a contract. But let us say you and I were partners and we broke up or partnership and we entered into an agreement that we would not compete in a certain territory or would not sell our commodities. Let us assume that our product is known as the Dunn-Garson something-or-other, widely known, and Dunn sells his, and Garson sell his, but we agree to protect that name and it is advisable that we not undersell for, say, 10 years. In that particular kind of case, which I have thought up on the spur of the moment, I think there is a contract there and I think there is consideration for it. Now, I have no doubt that it contravenes the law because it was between two manufacturers and, therefore, contrary to the public interest and that as far back as 1783.

Mr. FLEMING: And therefore unenforceable.

The WITNESS: The one you mention I do not think is a contract because there is no consideration for it, it is more of an understanding.

Hon. Mr. GARSON: A mutual exchange of covenants is not a contract?

The WITNESS: I would hesitate to express a legal opinion offhand.

Hon. Mr. GARSON: I am not trying to embarrass you to give a legal opinion, but when you say that this is just a contract, it seems to me that apart from the prohibition of the Combines Investigation Act or other law all of these other conspiracies in restraint of trade are just contracts; and the reason we passed the Combines Investigation Act was to make them illegal.

The CHAIRMAN: I would like to remind the witness once again that this is not in the brief. You involved Mr. Garson in this, although it is not in the brief. Perhaps we can bring this up again, but we would like you to finish your brief in the meantime.

The WITNESS: I get so interested in legal questions.

My proposition is that as between a manufacturer and a dealer it is a contract and it has been legal at common law for a great many years. If there is any difficulty about that contract, gentlemen, the courts are here, as they were in Montreal. Judge Marier was there. His court functions, and it decided a matter that arose by way of a dispute. There was a dispute under that little private law that the MacQuarrie Committee reports about. Mr. Duquette was unhappy because he could not sell 222's he could not get any from Frosst's. He sought damages and also applied for an injunction. There is the clearest example if there is any difficulty with these contracts the courts are there. The chairman has already reminded me that I have been bringing in some things that are not strictly in my brief. I will be of this much service to him and will not go into it. But there are two or three generations of litigation in the United Kingdom on resale contracts of one kind and another—all kinds of disputes arising out of this subject. I have not all the references here. The indications in the literature on the subject are that there have been many cases and I suggest to talk about this as a private law, where something is done behind closed doors and there is no social control by the judicial part of our government, is simply to beg the question and close your eyes to the facts. In talking about it being a contract, it is not as important a part of my brief, but I will be glad to discuss it if we have time later. Now, then, the final thing—I think this is the final thing, gentlemen—the heading at any rate which starts on page 28 is this: "Resale price maintenance does not discourage economic efficiency." Now, gentlemen, throughout the MacQuarrie report this phrase appears that resale

price maintenance does more to encourage inefficiency than it does to assist the independent dealer—I am paraphrasing their words. Now, gentlemen, that passage of nystrom I read a few minutes ago cuts right to the very root of that. Resale price maintenance makes people a little more ingenious to get brands on the market. Eaton's and others have their own brands. It creates that type of ingenious competition, that type of ingenious manufacturing procedure. Now, the question is whether there is inefficiency in some of the retail outlets, too. Let us assume a very cold-blooded attitude that here there are 4,000 hardware dealers in Canada. If 3,000 of them are operating inefficiently, therefore we should just weed them out because they are not an efficient unit. I think that type of government administration is in vogue in some countries in the world, but let us assume we are going to do that here, that 3,000 of them are inefficient, therefore we weed them out. Do not forget the five characteristics that I started out with, five characteristics in a hardware store you cannot get anywhere else. In a little country town you can get that type of service, but, now, suppose he is inefficient. We are a country of 14,000,000 people less 100,000, according to a Toronto paper I read this morning, and we are spread across 3,500 miles, and the density of our population is sad in many places. Now, that dealer has got to be in business at that crossroads selling aluminum pots and hammers, whether they are tack hammers or any other kind, he has to be in business at that corner. I suggest to you, as legislators, we must not lose sight of the social significance—and I use that word “social” in what I like to think as a pure sense of the term—of the independent hardware man at the crossroads across Canada. I say, suppose he is inefficient. I say we should keep him, let him stay in business—as I said a few minutes ago for the benefit of the Minister of Finance—and let him make a little money. But is he that inefficient? Here we have table No. 2, which appears on page 30. We are getting very close to the end, gentlemen. I do not think I will be very long. On page 30 we have this comparative efficiency. Now, again, these are statistics and Mr. McGregor might come back and say, “these are not anything, those are just bare, dry statistics”. I think they speak volumes. We have here a table showing the comparative efficiency in independent, chain and department stores in the United States. I was not able to get any for Canada. I obtained this from one of the reports of the Harvard School of Business Administration. We also have the chain variety stores in the United States. I am not suggesting for one moment that these chain stores are chain hardware stores. Do not think I am trying to suggest that they are not, they are chain variety stores but they are the only chain stores for which I could get any figures. We have chain variety stores. Then we have chain hardware stores in the United States, and they include chains and independents, and we have hardware stores in Canada. They also have independent variety stores in the United States. In each case we start at the first line and have 100 per cent of sales shown there. Your cost of goods for your department store—now, this is the national average of all department stores in the United States, and it includes Macy's, the bad boy of fair trading, and the others. Their cost of goods is 64·8 per cent. The chain variety stores, their cost is 63·68 per cent. The hardware stores, all kinds, their cost of goods is 71·8 per cent in the United States, and in Canada the cost of goods is 73·9 per cent. This is information that I was able to obtain from the library of the University of Toronto.

Now, then, at the purchasing level, hardware stores are, I will say, the most inefficient because they pay the most for their goods. Well, that is self-evident. We all know that the chain store can buy 10 carloads or six boat loads of something and get it at a price far less than Mr. Blain here can get it for his store in Brampton. Their cost of goods sold is very much lower than ours, so their gross profit is very much higher. Their gross profit is 35·2 per cent, ours for a hardware store in Canada is 27·1 per cent. We are inefficient



by that amount. Then comes the question of operating expenses. I must confess I was surprised to find this. With my little training in economics I used to think that when organizations got bigger they got more efficient, but there are certain types that do not, and one of them in a retail store, whether it is a hardware or a lady's shop, as they get bigger they get problems that create non-productive expenses and you get your operating costs going up. I would like if every member of the committee would hear these figures. You have read them, but I would like to read them for you.

Here is the significance, the operating expenses in department stores in the United States is 32.5 per cent, that is an average of all department stores in the United States, and according to all the news we hear they have the most efficient methods of doing business. Now, chain stores' operating expenses are 28.6 per cent, they have not got quite the operating expenses the department stores have. Hardware stores in the United States are 23.75 per cent, and hardware stores in Canada are 20.9 per cent.

Now, gentlemen, I put the proposition to you a few minutes ago, even if you think these fellows are inefficient we should keep them anyway because of their social significance. There may be other studies that go deeper into this, but may I repeat I only bring these statistics as a guide post, I do not ask you to accept them as final, because I have no doubt there are more statistics on this. I have only had ten days to think about this thing and I came up with this.

Then you have your cost of goods which is very low in chain stores and a little higher in the department stores, so I say we are not inefficient. If anybody think that resale price maintenance is sheltering inefficiency, certainly the inefficiency is not that of the independent dealers. If anything, the inefficiency from the standpoint of the public interest is in the department store. Just think of it in this way, supposing Mr. McGregor goes into Eaton's and assume that Eaton's operating expenses are the same as the average, which is 32.5 per cent, and Mr. McGregor buys something for \$100 in Eaton's; \$32.50 goes to pay for their operating expenses. If he goes into Mr. Blain's hardware store and buys something for \$100, \$20.90 goes to pay his rent and the junior who works in the store and light and all those things.

The CHAIRMAN: Are those the same goods?

The WITNESS: Mr. Chairman, the department store covers goods of all kinds.

The CHAIRMAN: Is it your point they sell the same goods for \$100 as the small store?

Mr. FULTON: On branded goods they do.

The WITNESS: I will give you an example. I bought a Beaver saw myself about a year ago for \$74.50. Now, let us assume for the purpose of simplicity that it was \$100, and you buy it in Eaton's for \$100, and if Eaton's cost is the same as the American average, \$32.50 goes to pay overhead. You buy the same saw from Mr. Blain for \$100, and \$20.90 goes to pay his overhead. The bulk-buying power of the big chain is more than wiped out by the efficiency of the independent dealer. Again I repeat I do not attempt to say these figures are the only figures available. I put them to you in good faith as the only ones I could find. I did some investigating in the drug store field and I have some figures on that if anybody wishes them.

The CHAIRMAN: We had the druggists before us for two sessions.

The WITNESS: These are the only figures I could find and they are figures from authoritative sources. I would urge your committee, with the greatest of respect, to pursue that matter further before accepting the MacQuarrie report that price maintenance shelters inefficiency or encourages inefficiency.



Now, gentlemen, I am through. I appreciate very much your patience because I have taken far more time than most of the other counsel who have introduced a brief; maybe it is my fault, but I am interested in the subject and I think it is something of the greatest importance to Canada and I do urge your committee not to exercise undue haste. I remind you the British committee spent two years before they got this volume. I do not know how long the Federal Trade Commission spent. I do feel your committee can very well follow up the type of statistical information I have found on this subject. You have heard a lot about the pharmaceutical lines and the electrical lines and so on, and I would urge your committee to follow this type of reasoning and get further information.

The CHAIRMAN: I want to thank you, and I want to say in passing you have unduly alarmed Mr. Thatcher about the penalties of getting too big in the retail trade.

I want to say, as chairman, one thing again on Mr. Hees' remark. Every other group who appeared before us had ample warning and Mr. McGregor, a retired civil servant, was invited on Tuesday, November 27, and appeared on November 28. He appeared here with only twenty-four hours' notice to prepare a brief and he had no accountants or lawyers to help him. I think we should be very grateful he did prepare the brief. I was interested to hear that Mr. Dunn, as a lawyer, spent ten days preparing this case. I am especially upset at Mr. Hees' remark about Mr. McGregor in view of his statement, "I think Mr. McGregor has answered all my questions".

Mr. HEES: Well, he had.

The CHAIRMAN: I again remind the Committee Mr. McGregor appeared on twenty-four hours' notice. Mr. McGregor's presentation of the brief was not quite as long as the summary of his own written brief presented by this counsel.

Mr. HEES: I had absolutely no objection to the time Mr. McGregor took. I think he gave excellent evidence, I think we learned a lot, and I think we have learned as much from Mr. Dunn today. I understood the purpose of this committee was to get the facts on this vital matter so that we do not pass legislation that is not justified. What is the objection to our sitting for two hours and listening to a very factual talk on this subject?

The CHAIRMAN: There is no objection at all. The procedure was that those who had strong views should present their views in writing and then we would, after studying the briefs, question them. I think to carry out that objective we will have to sit this afternoon.

Mr. HEES: Can you think of any better way we could spend our time?

The CHAIRMAN: I would like now and again to turn up in the House.

Mr. HEES: I think this is just as important as anything going on in the House.

*By Mr. Favreau:*

Q. First I would like to clear up one possible bit of confusion that may have arisen out of Mr. Justice Marier's judgment. In the province of Quebec we have no mandatory injunction, that is you cannot ask the court to give an order to enforce positively a private contract between two parties. It is true Mr. Justice Marier decided there was a contract in this particular case, but under our law a contract exists legally first, when there is consent between two parties and, secondly, when the consideration is legal. He did not render a decision as to whether consideration of the contract was legal, he just said, "If it is legal then there is no recourse before this court because I cannot

enforce it legally, and if it is illegal then I cannot give you the recourse which you demand". I think I should simply read the part of the judgment that covers that point:

Considering that if this condition is legal, respondent had a right to refuse the order seeing the violation of this clause by petitioners by selling certain products of respondent at lower prices than those indicated in the catalogue, and that if this clause is illegal, the contract depending on same is null and void, and petitioners may not demand execution of same by an order of this court.

There was never any decision concerning the merits of the contract, whether or not it is legal is still pending.—A. I am glad you brought that in. I do not want to labour it, but since you have gone into it in detail I would like to read my Montreal agent's translation of an earlier part of the judgment:

A fairly thorough investigation was made to establish the importance of petitioner's pharmacy and the importance of respondent company, but we do not think that this may alter in any way the decision in this case, because this is still a case involving private interests even if these interests serve a large public.

The Frosst Company in Montreal has many competitors who make or sell similar products. In Montreal there are approximately four hundred pharmacists who serve the public, notwithstanding the fact that their services are not, in the opinion of petitioners as widespread, speedy and effective as those rendered by the Pharmacie Montreal.

Is that a fair translation?

Q. That is quite a good translation.

Mr. FLEMING: May I ask if we can be furnished with copies of that judgment?

Mr. FAVREAU: We have a full copy, including the proceedings before the court.

The CHAIRMAN: I think it would be of interest to lawyers, I do not know if a layman would want to study that language.

Hon. Mr. ASELTINE: I suggest it be included in the record as an appendix.

The CHAIRMAN: The reasons for judgment should certainly be included.

Agreed.

Mr. FAVREAU: In view of the fact that there is very little time for members of the committee to question, I shall limit myself to two questions.

*By Mr. Favreau:*

Q. Your brief seems to be based on the British report. There may be some mistake in saying paragraph 163 is the last recommendation of the report. I read in my copy of this report paragraph 164, a further conclusion in paragraph 165, and further conclusions in 166 and 167. May I read this from paragraph 164:

Producers are not, in our opinion, entitled to use resale price maintenance to obstruct the development of particular methods of trading, to impede the distribution by another manufacturer of competitive goods or to deprive the public of the benefits of improvements in distribution. Public policy requires adequate distribution of goods with provision for such price reductions as are justified by low-cost distribution or by a regular policy of distributing surplus profit to the customer.

Then, speaking of the horizontal agreements, paragraph 114 deals with that:

It appears to us to be contrary to the public interest for a manufacturer to use his power to cut off supplies in such a way as to obstruct the growth of particular methods of trading, to impede the distribution by another manufacturer of competitive goods or to deprive the public of the benefits of low-cost systems of distribution.

Should we not conclude from the report that the committee did not want at that stage to go further than condemn horizontal price maintenance, but knowing vertical price maintenance carried some possible danger, they wanted to leave it to the government to decide whether or not vertical resale price maintenance should not altogether be abolished also? To make my question clearer, may I say that once the report of the Committee on Resale Price Maintenance had been tabled before the president of the Board of Trade, the Board of Trade reported itself to parliament with a White Paper called a Statement on Resale Price Maintenance, which was issued in June, 1949, and the conclusion to which I refer is paragraph 40 on page 11:

The government proposes to provide in the legislation to be introduced that manufacturers shall be entitled to indicate, recommend or prescribe only maximum prices for the resale of their goods and it will be unlawful to give any indication of resale price unless it is clearly stated that the price indicated is a maximum.

—A. I do not know if that is officially a question, but I am going to take the position it is enough of a question that I should in fairness deal with it in this way. First of all I would like to say I am obliged to Mr. Favreau for reading something further from this because I can heartily endorse this from cover to cover.

Mr. FLEMING: For the record, will you mention what it is?

The WITNESS: This is the British report. The white paper is subsequent to this.

The CHAIRMAN: It is a consequence of it.

The WITNESS: Gentlemen, I repeat again, Lloyd Jacob's report should be available to your committee. My friend Mr. Favreau read a little more than I put in, and that only means I want to read a little bit more after what he put in.

Mr. FAVREAU: This report was supplemented by a white paper in 1951.

The WITNESS: I do not concede it supplemented it. I would like to read paragraph 161 which I think puts in complete perspective what my friend Mr. Favreau read:

In arriving at our conclusions we have drawn a distinction between the fixation and maintenance of resale prices by an individual manufacturer and the collective administration of resale price maintenance schemes. The effects upon the public interest of these two methods of maintaining prices and their impact upon economy are, in our opinion, different.

My friend has asked me about the British white paper. Now, I am not experienced in politics and not too experienced in the British parliamentary system, but I urge you gentlemen to remember that the Board of Trade in England is not like the Board of Trade in Toronto.

The Board of Trade of Toronto is a group of businessmen who have business interests and they meet together for business purposes. The Board of Trade in England, as I understand it in my limited way, is part of the government which is in office from time to time.



*By the Chairman:*

Q. It is comparable to our Department of Trade and Commerce?—A. That is the Department of Trade and Commerce or the Federal Trade Commission in the United States.

Hon. Mr. ASELTINE: The white paper is a political report?

The WITNESS: Exactly, senator, and that is what I am coming to.

Mr. FLEMING: Issued by a socialist government?

The WITNESS: You took the words right out of my mouth.

The CHAIRMAN: Since Mr. Fleming has not read the debate, I must say that one of the most emphatic speeches was given by Ted Leather, a Conservative member coming from Hamilton.

Mr. HEES: And a very responsible member we are told.

Mr. MacINNIS: Does the fact that it has been set out by the government make it any less valuable than if it were made by a board of trade?

The WITNESS: Mr. MacInnis, I am not saying the British white paper is any less important but it must be put in its proper perspective. It is the political philosophy of a socialist government then in power in the United Kingdom. It is not a finding which pretends to be the result of an investigation. It is a statement of policy. It is the thoughts, the economic thoughts of the government.

*By the Chairman:*

Q. Would you just read on and see who asked that the report be made?—A. The board of trade.

Q. And as a result of receiving the report they issued a statement of policy—which is the white paper?—A. Two years later, and it did not coincide with the conclusions I have read from the Lloyd Jacob Report, where they recommend in part that the government should not take any steps at that time to interfere with vertical price maintenance agreements. They said: We are happy to know that horizontal agreements are still being considered—that is what the Lloyd Jacob Report said. That was tabled and gathered dust for a year and a half.

Q. That is not true, either, because in June of 1950— —A. I am sorry—it was a year.

Q. And in June of 1951 there was the second debate.—A. I am sorry.

Q. And it was a very extraordinary thing that in that debate which I hope members will read, Conservatives, Liberals, and the Labour people all joined together in denouncing this practice.

Mr. FLEMING: The chairman is now talking about a third thing—British *Hansard*.

The CHAIRMAN: I am talking of the debate in June 1951 after the presentation of the Lloyd Jacob Report.

Mr. FULTON: I think the chairman is strictly out of order.

The CHAIRMAN: I am the only one here who has, as a member, taken time to read this thing.

Mr. FULTON: How do you know?

The CHAIRMAN: Obviously, because the two of you are fumbling around and feeling your way through it—

Mr. FLEMING: Do not be so silly. If there is any fumbling around going on it is being done up where you are sitting. We have been talking about a report and about a white paper, and I wanted to bring out the fact that you are now introducing a third subject, British *Hansard*. I want to make it quite clear that I do not think the chairman should cast aspersions on people when someone merely wants to get the record straight.

The CHAIRMAN: I am not casting any aspersions. I mentioned three things and I said they were the official white paper, the Lloyd Jacob Report, and the two debates in June of 1950 and of 1951. I was delighted to see that some members noted down those things when I mentioned them. It would have been very helpful to members who are so voluble if they had read these things in the last two or three weeks.

Mr. FULTON: Mr. Chairman—well, never mind.

The CHAIRMAN: Go ahead, Mr. Dunn.

The WITNESS: I have made this suggestion or this proposal—I want you to consider the British white paper of June 1950 as a political document—a statement of political philosophy.

Hon. Mr. GARSON: Of 1951?

The WITNESS: I am sorry, I am getting confused—maybe I am getting tired; but it is much worse listening than talking, even at that.

Mr. HEES: It is very pleasant.

The WITNESS: This is a statement of political philosophy of the government then in force and I think we can take judicial notice of the fact that it was a socialist government which was in power at that time.

Now, in the course of my investigation I ran across two statements by fairly prominent members of socialist governments and their literary advisers in the United Kingdom which I think points to the background of this white paper. They illustrate that this white paper is a statement of political philosophy. There is a gentleman by the name of Mr. W. Padley, a member of parliament but I do not know from what county. He is in private life the president of the union of shop distributive and allied workers. That, I would guess, would be similar to the union in departmental stores and so on.

He made a speech and, although I cannot give you the original, I got this from a magazine published in England called *Scope*—widely disseminated among the manufacturing trade. It appears in *Scope*, the issue of September 1951 page 90.

Mr. Pradley has this to say:

Any attempt to solve the question of distributive efficiency by returning to private competition must be steadily resisted and countered by genuine socialists proposals for public control.

Now, his whole thinking is that the government should control all prices. It is inherent in that statement.

Back of the socialist government at that time was a gentleman well-known and who everyone reads—Professor G. D. H. Cole. He is a well-known writer, and, as we all know, very close to the socialist party in England. I will read what Mr. Cole said in his latest book—which is summarized here. It was not in print at the time that *Scope* went to press in September of 1951. This is modern stuff, not back in 1783. His book is called "The British Co-Operative Movement in a Socialist State."

He advocated that the state should buy up all large scale distributive organizations including multiple and department stores, and convert them into mutuals each with a board of management consisting of representatives elected by the customers and temporarily nominated by the state.

Here is what he says about the independents, and this is in quotation marks:

"For the present at any rate I would leave the small private trader alone on condition of them observing fair practices."

Mr. CARROLL: Those like Mr. Thatcher.

The WITNESS: Yes, like Mr. Thatcher—but Mr. Thatcher is just on the borderline of being a chain because, with one more store—

Gentlemen, that is the background of the white paper, which I suggest is a political document representing a party then in power. I might say that I cabled my representatives in England to turn up any statement that has taken place either during the recent election or since the election as to the attitude of the government which now has some majority in the United Kingdom—as to what their attitude is towards the white paper. I have not received a reply yet but whenever it comes I will certainly see that the information is passed on because I think it will be of some significance.

I am sorry that I have been so long.

The CHAIRMAN: I am anticipating the wishes of Mr. Hees and some other members of the committee, and if this is not acceptable we can vote it down. but is it agreed that we should meet at 3.30 this afternoon?

Mr. HEES: I would so move.

The CHAIRMAN: Moved by Mr. Hees, that we meet again at 3.30.

Carried.

*By Mr. Favreau:*

Q. May I put it to you more simply, Mr. Dunn— —A. As simply as possible, please.

Q. —that the statement of the board of trade on price maintenance in 1951 was the direct result of the board of trade having acted upon the recommendation contained in paragraph 165 of the committee's report of 1949. In paragraph 164 they said what I have quoted to you there concerning the advisability of not preventing the low cost distributor from passing on to the consumers parts of the advantages and they say in paragraph 165:

We recommend that appropriate government departments should invite consultations with the principal national organizations in trade and industry to consider the most satisfactory means of insuring that this policy is made effective.

And would it not be that in just having that investigation carried out in 1951 the board of trade came to the conclusion that the sole way to dispose of the matter was to prohibit resale price maintenance thoroughly?—A. As I read that, I think all they suggest is that the government go more deeply into the thing and get help from all trade organizations—and that is exactly what I would like this committee to do.

Mr. HEES: Hear, hear.

The WITNESS: I would like them to go into this whole subject from coast to coast, from hardware to lingerie, to see where price maintenance fits into Canadian economy and what it does at all levels. I suggest, with the greatest respect—I say that with so many legislators here—that should be your function.

Mr. FULTON: It should have been our function.

Mr. HEES: Still is our function, is it not?

The WITNESS: Being unlettered in politics I cannot say.

The CHAIRMAN: Some of these gentlemen here are pretty unlettered too, I can assure you.

*By Mr. Favreau:*

Q. At page 4 of the brief among the articles which you quote as being price maintained I see that you quote Stanley tools?—A. No, I do not.

Q. They are not price maintained?—A. No, Stanley tools are not price maintained.



Q. Could there be a mistake there and would you not say that Stanley tools are price maintained as a matter of fact?—A. As I understand it they are definitely not, but Mr. Gorsline is actually in the business. The question is whether Stanley tools are price maintained.

Mr. GORSLINE: To my knowledge the Stanley Tool Company, who are the manufacturers of Stanley tools in Canada, do not have any direct contact with any retailer in the group which we represent. They do not issue any price lists to the retail trade. The information which we secure on Stanley tools, price-wise, is from the jobber—which is only as a price to us. We must of necessity set our own retail prices.

Mr. FAVREAU: Would there be more than eight hardware stores in Niagara Falls?

Mr. GORSLINE: Could there be?

Mr. FAVREAU: Could there be more than eight hardware stores in Niagara Falls?

The WITNESS: Mr. Firth had better answer that question.

Mr. FIRTH: I believe the heading you refer to is the number of member stores. What page?

The WITNESS: The first page of the appendix—oh, I am sorry—what page are you referring to?

*By Mr. Favreau:*

Q. Page 24 of your brief, concerning Stanley tools?—A. What was the question again?

Q. I am asking whether to your knowledge there are more than eight hardware stores in Niagara Falls?—A. We show eleven in the appendix.

Q. What is the reason that I find in the Niagara Falls *Evening Review* of November 28, 1951, and in the issue of October 17, 1951, an advertisement listing Stanley tools at the same price—eight advertisers on this particular page—and this is on November 28? What would be the reason for those identical prices to be put forth by each of those dealers in the same locality—if there is no price maintenance?—A. Mr. Gorsline, you are in Collingwood, perhaps you could answer.

Mr. GORSLINE: Sir, I think the fact has been established over a great many years, and I think Mr. Dunn covered this point very well in his brief, that traditionally there is a mark-up on hardware products; a mark-up which has been recognized by the trade across Canada, I think. I believe the same thing applies in the United States.

On certain items there is a mark-up, assuming it is an operating mark-up, which makes it profitable to handle certain merchandise. I think you will find there is a very definite uniformity across the country, taking freight costs into consideration, in the mark-ups that are used. I think that would apply not only in the hardware business but in other types of business.

The WITNESS: Might I refer to sheet 5 of Appendix A. That sheet covers tools or hardware and you will notice, Mr. Favreau, that our pricing people have indicated pretty much for all those tools, or all things under that item, that it is 33½ per cent on selling price. On a couple of things they are lower but you will notice running across the stores on that particular page, sheet 5, that there is a very high degree of uniformity.

*By Mr. Favreau:*

Q. What sheet?—A. Sheet 5 of the appendix.

Q. There are two pages.—A. Yes, I am sorry. On the first page you will notice that Welland is way down. There is a local situation there because

Welland is a highly industrial city. There is a high volume direct to industry and a very large volume of sales not made over the counter in the ordinary way. On bolts and nuts you will see that in Welland their average mark-up on retail price is only 28½ per cent—even though we suggest from our experience in the trade as a whole that 33½ per cent is reasonable.

Q. In your experience, and I am asking any of the gentlemen who might have worked on the preparation of this list of prices, which is secret to the trade, how are your mark-ups prepared? Are they in practice prepared in the same way as by a manufacturer who decides at what fair average price he is going to fix the price on one of his articles sold nationwide?—A. May I answer the first part of that question, or perhaps the second part—or one part. The manufacturer, as I have attempted to show in my brief where there is price maintenance, sets his price so it will achieve two objectives. As I said before, the manufacturer just like everyone else wants to make some money. He wants to sell a lot of merchandise and he wants to make some money. If he does not get that merchandise across the counter to the customer he does not make any money.

So, he considers whether the customer will buy it at a certain price, having regard to other competitive items—as I have illustrated—having regard to private brands. So, the manufacturer in setting that price considers how best to get goods to the customer.

The second thing is that unless the retailer is left with a profit so that he can make some money the manufacturer is not going to do any more business with that retailer.

Let us assume the position of a complete monopoly in some item. The economists in the United States say that theoretically what a manufacturer would do would be to cut the retailer's margin down so low—and he could not get it in any other place—that he could make little profit. However, he could only cut it so far even under a monopoly or the retailer would not handle the item any longer.

Those are questions the manufacturer must consider and I am answering that part of the question because I think it is more within the field of my investigation.

Now, as to the procedure that the retailer follows—

Q. I am asking about the procedure which your organization follows to establish mark-ups which you have suggested to your members?—A. Perhaps Mr. Gorsline would speak on that.

MR. GORSLINE: I think I can perhaps give you a satisfactory answer to that question. The Ontario Hardware Association, as you will notice from the brief, has been in existence for many years. We conceived the idea that there were certain services that could well be rendered to our membership in view of the very extensive line of merchandise which is handled. The directors many years ago deemed it advisable that we should furnish all our membership with some guidance in the matter of costs, which are very hard to arrive at frequently, and also the suggested mark-up which may be used in the retail hardware field. In order to arrive at these figures we have endeavoured at all times to employ men with practical hardware experience, and they have been given sole responsibility of preparing for the members suggested resale prices. There was no suggestion on the part of the association, or no collaboration on the part of members or executive as to what these prices should be. The only thing in connection with this price service that the directors have ever discussed to my knowledge is what items we would like to have listed.

MR. FAVREAU: Would these prices recommended by the manufacturer himself be higher or lower than the mark-ups recommended by your organizations?

Mr. GORSLINE: That is a difficult question to answer. I think they may be substantially the same. I think in some cases we varied a little in our ideas. For instance, ammunition is manufactured by only one manufacturer in Canada and he does suggest the resale price which you will notice on page 3 shows a maximum mark-up of 25 per cent. These figures vary to a very small extent in some cases where freight does not have to be considered. We feel that 25 per cent is not a reasonable mark-up because this is a seasonal item and if you go into it in any degree at all you have an investment in that one item of \$2,500 or \$3,000 or \$3,500. I do not think with a seasonal line that 25 per cent is ample, but that is the suggested mark-up by the manufacturer.

Hon. Mr. BEAUBIEN (*Joint Chairman*): Gentlemen, we are adjourned until 3.30.

### AFTERNOON SESSION

Committee resumed at 3.30 p.m.

Hon. Mr. BEAUBIEN (*Joint Chairman*): Gentlemen, I think we have a quorum. Mr. Favreau, will you continue your questions?

*By Mr. Favreau:*

Q. Let us come back to the 1951 white paper again, please. Is it not a fact that subsequent to the presentation of the report—the presentation of the British report in 1949—the Board of Trade had asked diverse trade associations to supply it with information and suggestions as to the way in which, and by which, the two final recommendations of the committee could be implemented?—A. I am sorry, Mr. Favreau.

Q. You do not have that information?—A. No, I have not the British white paper.

Q. May I refer you to paragraph 38 of the white paper, which reads thus:

Thus the situation is that the trade organizations concerned, while no doubt accepting the first part of the Lloyd Jacob Committee's proposals, (i.e. that resale price maintenance by individual producers should be allowed to continue), have not been able to suggest any means of carrying out the second part, (i.e. that the practice should be operated with greater flexibility, so as to allow price reductions justified by low costs). The government regards these two recommendations as standing together and cannot accept a situation in which the first is fulfilled while the second remains a dead letter.

Is that the reason that they finally decided that the only way to implement the report was to get rid of resale price maintenance altogether?—A. Not at all, Mr. Favreau. The answer, I think, is to be found in the fact that fundamental to the position of the British Board of Trade is the political philosophy that went behind the government of the day, which, as I said this morning, has as part of its inherent philosophy control of prices by the government. Now, Mr. Padley whom I read from this morning made it quite clear that the socialist government of that day in the United Kingdom wanted to control prices: at the government level, that is, to control a broad field of prices. Indeed, the Lloyd Jacobs report is, as I say, a result of an extensive factual investigation. They made this clear distinction, which I read this morning, in paragraph 161, the distinction between the vertical and the horizontal, and they say, as I stated in my brief that the effects on the public interest of the two were different. They stated that the manufacturer of a branded article could not be different.



to the terms on which his goods were sold to the public. Then they go on to say, however, that with respect to the horizontal type further study should be given to see what could be done.

Gentlemen, as I see it, when the British white paper comes to the House of Commons it reflects the desire of the socialist government in the United Kingdom to enter in a large measure on the control of prices at the government level, and they indicate that the trade associations have not been very helpful in working out ways and means of that type of control. Well, I think that perhaps we can take it pretty much as read that trade associations do not normally like to have prices controlled by a government body, they think in terms of bureaucrats, of endless routines and forms, and so on, and do not like that. The part that you have read, I think, clearly reflects that difficulty, that they were not able to get the trade associations to suggest a type of price control which fitted into the political philosophy of the government of the day. I do not think we should assume for one minute that that white paper which you are reading from represents the position of the government of the United Kingdom today.

Mr. CROLL: Why not? They have not repudiated it and have not said they would not go along with it.

The WITNESS: I cannot ask questions, I know, but I have endeavoured to find out—

Mr. FULTON: Try, anyway, and see.

The WITNESS: —whether the present government has either repudiated it or not. I have not that information yet. If you have it I would be glad to know.

Mr. CROLL: I am merely telling you they have not repudiated it publicly up until now.

Mr. HEES: They haven't been in long, give them time.

The CHAIRMAN: *Hansard* debates show very clearly the Conservatives and Liberals supported the Board of Trade on this proposal.

The WITNESS: They supported it at any rate in 1951 when they were sitting on the other side of the House.

Mr. FAVREAU: I am reading paragraphs 164 and 165:

164. Producers are not, in our opinion, entitled to use resale price maintenance to obstruct the development of particular methods of trading, to impede the distribution by another manufacturer of competitive goods or to deprive the public of the benefits of improvements in distribution. Public policy requires adequate distribution of goods with provision for such price reductions as are justified by low-cost distribution or by a regular policy of distributing surplus profit to the customer.

165. We recommend that the appropriate government departments should invite consultations with the principal national organizations in trade and industry to consider the most satisfactory means of ensuring that this policy is made effective.

The WITNESS: Yes, and then in 166 they go on to say:

We can find no adequate reason to justify a manufacturer either in interfering with the terms on which the distributor disposes of another manufacturer's goods or in surrendering any part of his interest in the resale prices of goods bearing his brand for this purpose. Collective price maintenance schemes appear to us to have led to the comprehensive regulation of competition in the distributive trades and to have impeded the development of economical methods of trading

and prevented the reduction of distributive costs and prices. Associations of traders designed to bring their collective power to bear to maintain their members' prices are, in our view, undesirable and we note that the commission set up under the Monopolies and Restrictive Practices (Inquiry and Control) Act, 1948, has already been asked by the Board of Trade to investigate two of the industries from which we received evidence.

Now, they are getting into the horizontal again.

*By Mr. Favreau:*

Q. They are in favour of the vertical as long as it does make the consumer profit by the lower cost?—A. I think perhaps since you have brought that up you might let me read this—

The CHAIRMAN: At this point I might point out we are particularly interested in the hardware business in Canada this afternoon, and what may have been said in the British House of Commons can be left to the members to read.

Mr. FAVREAU: Can we read the reference into the report?

The WITNESS: You have raised this question of the British government being very anxious that price maintenance should not be developed so as to unduly interfere with the price to the consumer, and I would like to read paragraphs 48 and 49 at page 10 of Lloyd Jacob's report.

Hon. Mr. GARSON: This is all very interesting but surely the document speaks for itself.

Mr. HEES: This was prompted by your counsel.

Mr. FULTON: At the moment I understand the witness is replying to a question of committee counsel.

Hon. Mr. GARSON: He has told the committee this morning that he endorses all these things, that it is an excellent document from beginning to end, and we can read it.

The WITNESS: I commended it for your study. Mr. Chairman, it would have taken less time for me to have read this.

Mr. THATCHER: A lot of us are not lawyers and I would like to hear arguments that are not legal ones.

The CHAIRMAN: We understand counsel has studied the brief, but I think most of us are anxious to question the witnesses. Mr. Favreau will give way now if he has ten minutes at the end.

The WITNESS: May I have one minute?

Mr. CROLL: Mr. Chairman, who is running the meeting? I heard this gentleman all morning and I just couldn't take it any more and left. I want to question witnesses and find out something about the hardware business.

The CHAIRMAN: I must confess we would have progressed more if we could have questioned witnesses.

The WITNESS: I am just answering questions.

The CHAIRMAN: I will now end Mr. Favreau's questioning and call on Mr. Murray, who is first on my list.

Mr. MURRAY: I am not very well versed in this legal phraseology, and I might get my ears pinned back for what I want to say. I for one want to commend the last witness for the splendid presentation of his evidence and particularly for his favourable references to the drug profession.

The CHAIRMAN: Perhaps your drug association should have hired him too.

Mr. MURRAY: I have one or two questions but they are questions of importance and ones that have given me considerable concern. My experience with resale price maintenance goes over a number of years and I think that experience is after all one of the greatest teachers. I presume, gentlemen, your trade along with a great number of other trades throughout Canada today employs hundreds of thousands of retail clerks who are not only potential consumers, they are potential buyers, and maybe we can suggest to the minister they may be potential voters.

The CHAIRMAN: Is the minister the only one concerned with voters in this audience?

*By Mr. Murray:*

Q. I want to ask you if you are experiencing difficulty in your trade in retaining employees. Before answering that I am going to ask you to reflect on it for a moment because it seems to me you are not only competing in retaining female help but it seems to me today you are competing also with industry to retain retail clerks in your business. Do you experience that difficulty?—

A. I am going to have one of my colleagues answer that question, but I would like to mention the percentage of cost in the United States hardware stores of retail sales help. It is 9 per cent of all retail sales in the United States that goes to make up the payroll of employees. I thought that might be of interest. Mr. GORSLINE, will you answer the question about the difficulty of retaining employees?

Mr. GORSLINE: It seems quite obvious that in an industry such as the retail business, particularly in a small community where hours are longer than they are in industry, and in a great many respects possibly the wages would tend to be lower, we are faced with definite competition from industry in the employment of help. That is a factor which gives concern to us in our cost percentage, so far as help is concerned.

Mr. MURRAY: So that, sir, you would agree that retail clerks might be one of the largest employee groups in the entire dominion, and you might say they would be the first to suffer under the chaos which would follow a period of price cutting?

Mr. GORSLINE: I do not entirely like the words "price cutting". I do not think we are alarmed particularly in the hardware industry about the usual price cutting which goes on, on articles which are not nationally known and advertised at a price which is considered fair. I think that the consumer has been sold a favourable opinion of the manufacturer by his presentation of his merchandise, by his reputation for continuing service on that merchandise, and standing behind his guarantee; and I think that when a customer comes into my store to buy an electric appliance or any other item which is price maintained, he has made up his mind about the cost—possibly after shopping the area to find what is available in that particular line of merchandise. He has decided that this electric tea kettle, for instance, at \$16.50 represents value for his money, backed by service and that it is an article on which he can depend. I think the whole theory we are trying to arrive at is whether it is logical for the government to permit the complete cancellation of that evidence in the minds of the public—on merchandise that is nationally advertised.

Mr. MURRAY: I, sir, am interested in the result that this is going to have in creating chaos in the retail trade and lowering the income that the employee will receive. Only yesterday I talked with the Bureau of Statistics and I found that weekly earnings of the retail trade for Canada as of October 1, 1951, were \$41.23, whereas the over-all earnings for Canadian citizens as of that date were \$51.53.



You can see there is already quite a variation and if this situation creates lower margins for the retailers, they of necessity are going to create lower wages for retail clerks in Canada. That is the point I am interested in—the result of this thing.

Mr. GORSLINE: I think it is very hard for us to predict the results of something we do not know very much about. We do know from what information Mr. Dunn gave us this morning that when this matter was handled in the States and when the setting of retail prices was made illegal by the federal government, there was apparently a period of chaos. The state governments took up the matter in turn and enacted fair trade laws to get away from the chaos that had been created.

I think, speaking for the hardware industry, from the very nature of our business which, as has been explained to some extent, has certain technical aspects and people must spend years in it and even then know nothing about it, that our average payroll per employee is possibly higher than it is in some of the other retail outlets. I do not think we stand on the comparison of wages paid to the same extent, possibly, as some of the other stores who are selling items at much lower margins—such as groceries, where technical knowledge of the item is not so necessary for successful selling.

Mr. MURRAY: And I think you could say, sir, that you may therefore lose your sales clerks to industry because the prevailing rates in industry are higher?

Mr. GORSLINE: Yes, I think that is true in general.

I think it might be interesting to recall in the period of the war when labour was allocated to this industry and to that industry, the retail trade of the country regardless of its importance to the consumer and that he should have goods available to him at all times, had absolutely no priority in the employment of help. There was just no such thing. We had to take what we could get where we could find it—cripples, or old people, or anything that we could find that might offer something in wrapping up parcels, but it was not salesmanship.

Mr. MURRAY: I think you would agree that the orderly process of established prices provides employment and it is in the interests of the general economy of the country?

Mr. GORSLINE: I agree absolutely.

The CHAIRMAN: Mrs. Fairclough?

The WITNESS: In line with the question I think that Mr. Lamb has made some calculations on the number of retail stores or types of retail stores and persons depending financially upon them. It might be interesting to the questioner if he could tell the committee something about that.

Mr. LAMB: I understand there are 248,000 retailers in Canada and if they averaged three persons per store you would have 744,000 employees.

Mr. FULTON: In all retail stores?

Mr. LAMB: Yes.

Mr. CROLL: How will this bill affect them?

Mr. LAMB: Well, naturally, if a dealer in any business cannot make any money he cannot pay his employees and he will have to cut down his staff.

The CHAIRMAN: Mr. Croll, you are about eighth on my list so you should save your questions until then.

Mrs. FAIRCLOUGH: Mr. Chairman, this morning Mr. Dunn referred to the number of items which are ordinarily carried by retail hardware stores—26,530. I do not know whether every store carries that many?

The WITNESS: No.

Mrs. FAIRCLOUGH: He also referred to 2,094 which are the subject of resale price maintenance. Now, I have brought up this question before and I would like to bring it up again with the hardware people. Of the 2,094 items which are subject to some measure of resale price maintenance, do you have any figures which would show how many are merely suggested prices and how many are rigidly enforced?

Mr. GORSLINE: I think I might offer you an answer to that question. It has been a source of questioning in my mind as to just how far this resale price maintenance proposition goes. In our business we have a great many lines of merchandise on which a suggested resale price is named by the manufacturer. There is the other group of merchandise which we know as "franchise merchandise" which covers major appliance lines and on which suggested prices are more or less enforced.

There is only one manufacturer with whom we do business and with whom we signed a resale price maintenance contract, and as I understand it, it is the intention, when any retailer signs a contract, that the manufacturer expresses a desire that the price be observed. I believe if there were continuous cutting below that particular level the manufacturer might feel in the interests of himself and his customers across the country that some action should be taken to persuade that retailer to adhere to the price that he has suggested.

I think I have answered Mrs. Fairclough's question in the fact that the actual number of items which we feel we are definitely required to maintain price on is comparatively small, but the items which we include in those 2,000-odd as being resale price maintenance items are items on which the manufacturer has suggested the resale price and which he much prefers to be followed by all the trade.

Mrs. FAIRCLOUGH: Then you would say that the manufacturer does not come into your store and remove his stock, at least the stock of his manufacture, nor does he penalize in any other way the retailer because of the odd article here and there that is sold below the price he has suggested, but in the case of steady sales—that is, if you sold an article consistently, on which he had suggested \$16.50, and you sold it all the time at \$15.50, he might remonstrate with you and eventually, according to the contract, remove this stock from your store. Is that correct?

Mr. GORSLINE: I think there is a possibility of that happening. As I stated we do not have contracts, and you must also remember that the enforcement of this resale price maintenance would be a tremendous job on the part of the manufacturer because I suppose that retail hardware trade on the smaller items of price maintenance, that they are practically all purchased through a jobber, there is no direct contact with the manufacturer on them, but it does seem fair to me, I may have a very fine business in my community and an article goes out to be retailed at \$9.95, and I may have a competitor who is comparatively weak financially and by consistently selling below him on any price maintenance article I can probably force him out of business, which I do not think is good for me nor good for him. I think the success of business in any community—we have three hardware stores in Collingwood, if we had four I think we would get more hardware customers because there would be more choices of sources of supply, and on such widely advertised articles, nationally advertised products as Johnson's wax, they provide a satisfactory business and a lot of stores want to sell that product. They have created a tremendous demand for Johnson's wax products and everybody is anxious to handle them, but they are sold at a narrow margin of profit.

Mrs. FAIRCLOUGH: You referred to the MacQuarrie report, under general conclusions and recommendations, it says here in the third paragraph:



It is to be noted that the committee does not recommend that it be made an offence to prescribe and enforce resale prices which are not minimum.

And then it goes on to say:

It follows that suppliers would be free to suggest and enforce maximum resale prices.

Now, I would like to ask these gentlemen whether anyone would care to comment on the likelihood of a maximum price becoming an accepted price for any article in the hardware field. Assuming that this legislation goes through, supposing a manufacturer adopts a maximum price for some article. What would you say were the chances of that price becoming the price for the article?

The WITNESS: I think I can answer that rather quickly. I think there will be a great tendency among many of the independent stores to accept such a price as the general price, but if the stores with large buying power decided to sell at a much lower price, then there would be complete chaos, nobody would know where they were and, eventually, if that general price was below the price at which the general run of independents could make a profit, then the product would disappear off the market.

*By Mrs. Fairclough:*

Q. In a condition such as you describe, that would be possible only in times of plentiful supply of that particular product, but coming into an area of scarcity would you believe that the tendency would be to maintain the maximum price?—A. The tendency would be stronger, then, yes. But, again, scarcity and location have a lot to do with it. It would depend. In a city such as Hamilton, where you have a lot of outlets, the problem is different to that of a small place, where you have only one or two outlets, and the question of scarcity becomes more important. It is then a question of scouting around to every town to get the few scarce items. They would never show up in a town like North Bay.

Q. That is a statement like one I made the other day in this committee, that under such conditions equitable distribution of goods in short supply would almost disappear.—A. Yes, as I said this morning, in the case of the mixmaster, after the second world war if it had not been for resale price maintenance in which a set price was established, people would have been paying fantastic prices for mixmasters. When one showed up it would go to the highest bidder. It would mean individual dickering, and when that happened people would begin to wonder what is a fair price for a mixmaster. If one of their friends had bought one for \$150 because they were scarce, and somebody else got it for a lot less, confidence would begin to be lost in the product and people would stop buying it. That is what happened to the Ingersoll watch.

Q. I do not know whether, Mr. Chairman, I can refer to the British white paper.

The CHAIRMAN: Any member is entitled to do it because we had discussion on that by the witness.

*By Mrs. Fairclough:*

Q. I would like to refer to the note by Mr. Henry Smith at the conclusion of the recommendations.—A. That is the dissenting member.

Q. Yes, he is a dissenting member, and in paragraph 2, the second sentence, he said, referring to resale price maintenance,

... it inevitably leads to retail prices being higher than they would otherwise be in areas and under conditions where distribution costs are low and to an unnecessary proliferation of retail outlets.



Would you agree with what he is saying in effect there, that it is his opinion that trade should be concentrated in the larger distribution areas, and the closing up of small businesses which he contends cannot operate at the same margin as the larger business?—A. Of course I do not understand him at all when he says that price maintenance leads to prices being higher in certain areas, because the experience—Mr. Gorsline, I think, mentioned this morning his business is in Collingwood. He has to pay transportation on merchandise from the nearest point, like Toronto, but on an item like a Sunbeam mixmaster he sells it at the store at the same price as it is sold in Toronto, he absorbs the transportation cost. As he said this morning, if the item is not price maintained it is invoiced to him at a certain price, he pays the shipping prices and then makes a mark-up on the cost price, cost plus shipping charges plus mark-up, so if there is no price maintenance it is my feeling you would definitely pay a dealer more for a thing like a mixmaster, particularly in a remote place in northern Ontario.

Q. You could not call those places in Ontario that are remote from large trading centres, you would not call those areas where distribution costs are low. I fancy, Mr. Smith refers to what he has said here, the prices might be higher in Toronto but there are too many retail stores anyway.—A. Yes.

The CHAIRMAN: This is your last question, Mrs Fairclough.

*By Mrs. Fairclough:*

Q. I would like to concentrate on this one. It would look to me as though Mr. Smith is saying it does not matter very much whether there are retail stores in Collingwood or some place in the north, that if there is a big store in Toronto that can sell the article cheaper than the other stores can, the consensus is that it is better to have the one big store in Toronto and not have these other little ones.—A. I said this morning, if you have 3,000 merchants that are inefficient out of the 4,000, let them disappear, and then the people can order through the catalogues and have things sent to them, but they won't have the hardware merchant in their town to put in a pane of glass or fix the baby carriage.

The CHAIRMAN: Mr. Thatcher, it is your turn.

*By Mr. Thatcher:*

Q. I have only two or three questions. I was interested particularly in one part of this brief, and that is the experience of the United States and Britain with the practice, because I think that the Canadian government could benefit from the experiences of those countries. I am not just clear as to exactly what has happened there and I would like to have Mr. Dunn amplify it a little. If I understand, from page 7 of his brief, in effect, around 1890 this practice was abolished in the United States.—A. A little later than that, because it was some years before the Supreme Court of the United States finally ruled that vertical agreements were contrary to the anti-trust bill.

Q. The effect of that legislation in the United States was similar to what would happen if we were to abolish it in Canada? I mean there would be a parallel as far as the legislation is concerned?—A. Yes, except their legislation required judicial interpretation to have effect. Our bill is more clean-cut. It would not take a court to determine what is to be done.

Q. Could you tell me this: In the United States what was, in a general way, the experience that retailers had when that legislation was abolished? Did it create chaotic conditions? Did it put many people out of business, or was it serious?—A. I would not undertake to give statistics as to how many people went out of business in that period, but the literature on the subject is full of this theme, that when branded products were kicked around, as

they were during that period of time, many of them disappeared from the market completely, and were replaced subsequently by other comparable items which eventually came on the market at higher prices. I gave a minute or two to tell the story of the Ingersoll watch this morning. It was colourful and interesting, but there are numerous similar examples.

Q. Excuse me, Mr. Dunn—you would say it caused very difficult times?—A. No question about it having caused severe hardship, both to the retailers and the public.

Q. Do I understand from your brief that the net result of that was that 45 out of the 48 states had to repeal or put back some kind of fair trade laws?—A. The situation was so bad that they had to take legislative measures to legalize the practice, and they then called it fair trade. It started in California in 1931 and it was so responsive to public demand that it followed in 44 other states in a few years.

Q. Your suggestion in your brief is that the American experiment with this type of legislation was a failure?—A. Absolutely. History reveals that it was a failure there, and if we put this legislation through here we are going back to the 1900's.

Q. I have tried to follow just what happened in Britain. You say a committee was set up to study the question, called the Lloyd Jacob Committee. Was that a parliamentary committee like this one, or a private committee like the MacQuarrie Committee?—A. It was a private committee like the MacQuarrie Committee.

Q. It was supposed to be an impartial committee?—A. I would not know how it related to the political complexion of the government of the day, but I believe eminent gentlemen were called in.

Q. On page 17 of your brief you state that the British Committee recommended that no action should be taken. In other words, they recommended exactly the opposite of what the MacQuarrie Committee recommended?—A. Yes, and they recommended the very opposite to what the United States Supreme Court did.

Q. Let me follow a step further. Was this reported back to the Labour Government?

Hon. Mr. GARSON: I do not want to interrupt my friend, but I think that in respect of a document which we are all capable of reading it is going to mislead this committee terribly if questions and answers of the type we have just been hearing are given, because the statement that has just been given by the witness, I do not agree with it for one moment as an accurate statement. Why should we, in relation to a report which we can all read, trail the witness through it and take up the time of the committee, when we can form our own conclusions? It is written in the English language and not in a foreign language.

Mr. THATCHER: Mr. Chairman, there have been 50 briefs filed in here and we have had no time to read them. If this witness can tell us in a nutshell, why should we not get that information from him?

The CHAIRMAN: If Mr. Thatcher follows this line of questioning he will find that the Labour Government did go ahead and that these views are not those of the Labour Government.

Mr. THATCHER: I would like to get the facts.

Hon. Mr. GARSON: I suggest that the facts are here, the facts of the report is the report. You can call 20 witnesses and you will still have to go back to the report to see what the facts are. What is going to happen is that this evidence will be put on the record and if there is any further debate or discussion, those taking part in it—if they are foolish enough—will quote the witness, and then others will quote the report. So we might as well be on a basis of equality and quote the report from the start.

Mr. FULTON: I am not a very good lawyer and I might need assistance in interpreting a document. Are we not allowed to avail ourselves to the assistance of expert evidence, and I think that Mr. Dunn can be called an expert in this respect—

The CHAIRMAN: This committee has employed two eminent counsel, who have been sitting here with the Lloyd Jacob Report and the British white paper, and not one of the members of your party here, I am told, have yet availed themselves of that source of information. And now you ask a man who has come forward as the counsel of one particular group to give us information that can easily be obtained from our counsel. If you are asking this, Mr. Thatcher, the consequence of that report was that the British Labour Government announced in the British House of Commons that they intended to bring in legislation to ban resale price maintenance.

Mr. FULTON: You have said that about four times now, Mr. Chairman, and we heard you the first time.

The CHAIRMAN: It probably takes four times to hammer it in.

Mr. THATCHER: May I proceed now?

The CHAIRMAN: I will give you an extra four minutes because of the interruption.

Mr. THATCHER: Now, you say according to the report they recommended no action should be taken, which was exactly the opposite to what was done in this country.

The CHAIRMAN: They published a white paper accepting the report and announced in Parliament they were proceeding with the legislation.

Mr. THATCHER: Why didn't they?

The CHAIRMAN: Because, fortunately or unfortunately, an election intervened.

Hon. Mr. GARSON: All this material is spelled out in words of not more than three syllables in the report to which the witness is referring and in the white paper. It is a waste of time asking the witness questions on this when he has certainly not by any evidence today been qualified as an expert economist.

Mr. THATCHER: If I want to waste ten minutes trying to get information I can do it.

Mr. MACINNIS: Mr. Thatcher has the right to ask any questions that are within the ambit of the brief presented by the delegation before us today. I think it would be much better to let Mr. Thatcher ask the questions and let the witness answer if it is information that throws more accurate light on what has been done.

The WITNESS: I think I can shorten this by saying I agree entirely with Mr. Garson that a document such as this should speak for itself. I should also add one of the things that impressed me most of all is that none of the recommendations found their way into the MacQuarrie report. The only reference to this economic investigation was a short quotation from the terms of reference but otherwise we do not know from the MacQuarrie report what they did. Now, I ask you gentlemen to take the time to think about it and digest it but do not gloss it over the way the MacQuarrie Committee did.

Mr. FULTON: May I speak on a point of order. I understood, and it has always been said in connection with inquiries of this sort, that one of the advantages is they throw the searchlight of publicity on what is going on. It is quite true we are all capable of reading these documents and if there is criticism of anybody who has not read them we can accept that criticism, but the fact



is the public has not read them. The public is interested in this—although the chairman and the government are doing their best to keep them uninformed—

The CHAIRMAN: Some of the members are doing their best to prolong the inquiry.

Mr. FULTON: I think Mr. Thatcher should be allowed to ask this witness what the documents say and what the sequence of events were subsequent to the making of the report, so that information may appear on the record.

Hon. Mr. BEAUBIEN (*Joint Chairman*): Every member of the committee knows the sequence of events.

The CHAIRMAN: I think I will let Mr. Thatcher proceed. I would remind him that the witness is a representative of a group of hardware merchants.

Mr. THATCHER: The most powerful argument he has made today is that the experience of these other countries with price maintenance did not work, and if I am wrong in that I would like to know it.

Mr. HEES: If Mr. Thatcher had been allowed to go ahead he would have been through.

Mr. CROLL: It would be a pity to have him through; I want to hear him.

Mr. THATCHER: I wonder if the witness would say if there are any other countries in the world he knows of where they have abolished price controls?

The WITNESS: I read some place in my travels that no other country beyond the United States had actually found a condition where the practice was illegal, and I saw references to European countries indicating that the practice was quite legal there. I cannot explain it further than that, but that came up in the course of my investigation.

The CHAIRMAN: Mr. Thatcher, would you permit me to interrupt for one question? Have any of these European countries any form of combines legislation?

The WITNESS: I cannot give you exact information but the information I did get from my reading was that in European countries the practice was legal and therefore the United States was the only country of importance where the practice was at any time illegal.

The CHAIRMAN: For your information, Sweden in 1946 and Great Britain in 1948 were the only two countries to have any combines legislation.

The WITNESS: We were discussing resale price maintenance and vertical agreements, and I was asked a question and I said from my reading that no country had made it illegal. I wasn't purporting to give any evidence on combines legislation.

The CHAIRMAN: This is a committee on combines legislation.

*By Mr. Thatcher:*

Q. I am referring to page 21, and Mr. Dunn suggests at the top of the page the British government found price mark-ups on maintained goods were lower than other types of goods. Do I take it from that the British government did go into figures and facts?—A. The report so indicates. They called dealers and manufacturers, and they got costs, mark-ups and came to that conclusion.

Q. From your remarks this morning I gather that neither the MacQuarrie Committee nor this committee have gone into this kind of thing?—A. Precisely. I think that is what you should do. My figures are just a guide post to you. You might find my figures are wrong.

Q. Do the figures you have submitted to us as an association generally indicate that in the industry margins on price maintained goods are less?—

A. The information as to margins is not as clear as it is on price rise. The indication on price rise is very marked and price maintained goods have not risen as high as non-price maintained goods. The difference in the margin is not so acute. You will notice it is 21·6 in the case of paint but it is not uniform across the board. The tendency is for the mark-up to be much larger on non-price maintained goods. The hardware man figures he has to have 33½ per cent on general lines.

Q. Some of these figures on pages 23 and 24 do indicate price maintained goods have not gone up as rapidly as other non-maintained goods in the past few years?—A. Oh, definitely.

Q. You maintain this practice as far as the hardware business is concerned has kept prices down?—A. There is no question in the world.

Q. If price maintenance is abolished would prices generally in your line come down or would the cost of living come down?—A. If price maintenance were abolished I think it would be demonstrated that these price maintained articles we show on page 23 would go up a substantial amount. These men I talked to today tell me they do not get enough margin on price maintained goods. For instance, electric bulbs are 25 per cent on retail. The generally suggested mark-up I am told is 33½ on retail prices. If they were not price maintained tomorrow they would want to get 33½ per cent in the outside places.

The CHAIRMAN: You now have had eighteen minutes, Mr. Thatcher.

Mr. THATCHER: But you said you would take off all these interruptions. I only have two more questions.

*By Mr. Thatcher:*

Q. One thing which small retailers I take it are worried about is if this maintenance was abolished it might help to concentrate a lot of business in the large department stores. This morning we had Woodward's come in and they were the ninth department store that said they favoured it. What is the feeling of your association?—A. Our people for the most part are independent and are in competition with the chains.

Q. Do you think any countries would be put out of business, is it that serious, or would you just be hurt a little bit?—A. Our profits would be very substantially reduced, we would be unable to continue a great many lines and the customer wouldn't be able to get a great many lines. A large number of products would disappear from the small store and people would have to go to the larger centres to get them. It would most definitely take a great many products out of the small stores.

*By Mr. Hees:*

Q. I was very much interested this morning in what you had to say about the United States fair trade laws. Am I correct the history was roughly this, in 1900 the United States government outlawed price maintenance and in the period from 1900 to 1931 there was a very unsatisfactory period from the point of view of the retailers and consumers. In 1931 we saw the appearance of the first fair trade law in California and today in forty-five of the forty-eight states we have fair trade laws which have been legalized by the Millard Tidings Act.—A. It is a long question and I think the answer is yes.

Q. I would like you to comment on the impression I got that these fair trade laws must be just as satisfactory to the consumers as they are to the retailers because we all know governments are elected by people and there are a great more consumers than retailers. Now, if these fair trade laws had not proved satisfactory to forty-five of the forty-eight states the governments would have been defeated and the fair trade laws thrown out. Therefore I think it is fair to assume these fair trade laws are satisfactory to the people

of the United States.—A. I am not a politician but these laws were passed by legislatures and legislatures are elected and usually wish to follow the wishes of the public or they won't get elected the next time. Now, the Act was actually passed by the legislature in California and if it had been unsatisfactory I doubt if it would have passed in other states and I doubt very much if it would have passed through congress, because you have all kinds of pressure coming on congress. I think it indicates it has the support of the public.

Q. These fair trade laws in the United States are satisfactory to retailers and consumers?—A. I think we have to take that.

Q. I am glad you agree with me because I think that is a very important point. Following along from what you said this morning I take it this committee studied the problem of resale price maintenance for a period of two years and came to the conclusion that no action should be taken to interfere with vertical price maintenance; is that correct?—A. I have already stated that and the committee can see the report for themselves.

Q. In view of what has taken place in Great Britain and the United States, does it not seem extraordinary to you that we here are planning to pass legislation to outlaw price maintenance instead of examining the possibilities of introducing legislation similar to fair trade laws in the United States?—A. I would say we are just putting the clock back fifty years and starting where the United States was in the 1900's. In doing that we have to go through the whole business of having legislation passed to bring in fair trade laws.

Q. It has become obvious I think to those sitting on this committee that the government intends to steam-roller this legislation through.

The CHAIRMAN: Mr. Hees, order. The matter of examining witnesses is one thing, but some of the opposition seem to be trying to obstruct the proceedings.

Mr. HEES: I will be through in my ten minutes, but this is a conversation between me and Mr. Dunn and I am very interested in his opinions.

The CHAIRMAN: Mr. Dunn is also an expert on parliamentary procedure in this House too.

Mr. HEES: I don't think anything I said is unparliamentary. I think you are holding things up.

Mr. CROLL: I think it is untrue, Mr. Chairman, and that is much worse.

Mr. FULTON: Mr. Chairman, a point of order.

Mr. CROLL: Is Mr. Fulton raising a point of order?

Mr. FULTON: Yes, I am.

Mr. CROLL: What is it?

Mr. FULTON: I want to know who has the floor here, what kind of procedure it is—

Mr. CROLL: This is Sinclair procedure here.

Mr. FULTON: That is the truest statement yet made here.

The CHAIRMAN: It might also be that Mr. Fulton, Mr. Hees, and Mr. Thatcher are doing everything they can to delay this committee.

*By Mr. Hees:*

Q. Now, it is obvious to me and I think to others on the committee that the government intends to steam-roller this legislation through. Do you not consider it is possible that legislation to deal with loss-leaders should be introduced to protect the small retailer?—A. Regardless of how the legislation comes through and by what mechanical process, if the legislation comes through next month or next year, the retail trade will be in great jeopardy unless the legislation in itself or in some parallel statute gives real protection against loss-



leaders. I may say I am very pleased to see my friend, Mr. Croll, has embarked on an attempt to define loss-leaders. I think it is going to be exceedingly difficult to define loss-leaders. I think Mr. Croll has made a start and I commend to the committee a study of this question and I do say with all the conviction I have if this legislation goes through next week or next year it must be accompanied by protection against loss-leaders.

Mr. HEES: Mr. Chairman, I am through in seven minutes.

The CHAIRMAN: Thank you, Mr. Hees, you are an admirable man—as far as time is concerned.

*By Mr. Carter:*

Q. I think the witness said this morning he had made a sort of one-man personal survey, is that right?—A. That is right.

Q. And you found that the consumer was very ill-informed about this?—A. He knew nothing about it.

Q. I think you used the words he had a vague notion that somebody was making twice what they should be?—A. That is right. It is the very word “fix.” He has not made any study of it, he just thinks somebody has fixed it, and if somebody has fixed it it cannot be good.

Q. Are you acquainted with the situation in Newfoundland?—A. As I told the chairman this morning, I cannot give any assistance on it.

Q. Will you accept as a fact that before Confederation there was no resale price maintenance in Newfoundland?—A. If the member has made this investigation himself I accept it with pleasure.

Q. Well, I am a Newfoundlander myself and I know from personal experience; and it was confirmed in a brief submitted to this committee by the Newfoundland Co-Operative Union—

The CHAIRMAN: And by the Royal Commission on Prices.

*By Mr. Carter:*

Q. Yes, and by the Royal Commission on Prices. Now, when Newfoundland came into confederation it suddenly felt the impact of resale price maintenance. Newfoundland was different from other provinces of Canada where the impact was gradual—and in the case of Newfoundland the impact was sudden.—A. I am going to ask questions before I can answer that type of question. In Newfoundland, before confederation, was price maintenance illegal?

Q. No, it was just not practised.—A. All right, I understand. That was just the same as it was here in 1927.

Q. And as a result of the sudden impact of resale price maintenance in Newfoundland this is what happened. Page 23 of your briefs mentions batteries and, I do not know the figures for flashlight batteries, but in Newfoundland, in my province, ignition batteries are a very important item for fishermen.—A. Yes.

Q. The position in Newfoundland was that before confederation the landed cost to the retailer of an ignition battery was 45½ cents per cell. The price to the consumer was 60 cents per cell. Then came confederation, and suddenly the landed cost went up 1 cent—from 45½ cents to 46½ cents to the retailer—but the price to the consumer jumped to 80 cents. From 60 cents to 80 cents—to the consumer?—A. What type of battery was that?

Q. Number 6 dry cell.—A. Who manufactured it? Is it Eveready?

Q. I am not certain whether it is Eveready or Columbia, but there are several of them and the prices are just about the same.—A. But there are batteries which are not price maintained. I wonder if we could have it established in any way that this was a price maintained battery.

Q. Well, according to the brief—

The CHAIRMAN: There are two briefs which have been submitted to this Committee: one from the Co-Operative in Newfoundland and one from the Premier of Newfoundland. I know you are an expert on the British one—but this is a little closer to hand, in which all these facts and figures were also given.

*By Mr. Carter:*

Q. Would you not say in the face of that evidence that the consumer was really justified in thinking that somebody was pushing up the price a little higher than it should be?—A. There is no doubt about it but that the price is higher than it was before. There is no doubt about that, but I cannot say why. I must confess I do not think I should be asked—where I do not have in front of me the exact legal set-up. It may be that you have a definite price maintained battery. Now, transportation costs were one thing and it may be that they were being handled in some other way.

Q. Well, I do not wish to take too much time but the landed costs jumped 1 cent whereas the retail cost jumped 20 cents.—A. That took place in how short a time?

Q. Immediately after confederation?—A. What about taxes?

Q. Taxes were the same in each case.

Mr. THATCHER: What about sales tax?

Mr. HEES: And excise tax.

Mr. CARTER: Landed cost includes taxes and everything. However, I do not want to take too much time on this and I want to get along to something else.

Mr. HEES: Stay with that one.

Mr. CARTER: We have had evidence before this committee, Mr. Dunn, concerning aspirin tablets. We found that you could buy an aspirin tablet which conforms to the government regulations and contains all the necessary chemical ingredients, the exact formula put out by another firm, for 19 cents.

The CHAIRMAN: Per hundred.

Mr. THATCHER: What type of hardware is this?

The CHAIRMAN: The same type of hardware the witness was referring to a little while ago.

*By Mr. Carter:*

Q. But Bayer aspirin sells for 79 cents. Would you not think in the light of that evidence that the consumer is justified in saying that somebody is putting the price up higher than it should be?—A. Mr. Carter, according to my investigation, Bayer aspirin in 24's in 1939 sold for 39 cents. In 1951 they sell for 29 cents—an increase of minus 25.6 per cent.

Q. I am not interested in that?—A. You are suggesting that prices are going up.

Some Hon. MEMBER: That is because of copyright.

The CHAIRMAN: Order. Mr. Carter asked a question about evidence previously given here by Professor Fuller, the representative of the druggists, in which he brought forward the fact that Bayers aspirin sold at 79 cents for 100. As Dr. Blair pointed out, this is the only country left where Bayers have a copyright. Mr. Fuller admitted—he did not say any drug store, but Mr. Preston later said that in 100 per cent of the drug stores, there was for sale a non-maintained price aspirin complying with the pure food laws selling for 19 cents. Mr. Carter is asking—

Mr. THATCHER: On a point of order, Mr. Chairman, at the risk of being batted down again, what has the price of aspirins got to do with the price of hardware?

The CHAIRMAN: I am very glad you raised that point, Mr. Thatcher—how counsel for the hardware people gets into the drug business—but he got into that by quoting I think it was the Murray Company and the witness himself introduced the pharmaceutical business.

Mr. THATCHER: Do two wrongs make a right?

Mr. CARTER: Do I have time out?

The CHAIRMAN: No.

Hon. Mr. GOLDING: Was there not a motion passed here that members of the committee were to question a witness only on his own brief?

The CHAIRMAN: Senator Golding, I am very glad that you brought out that point too. The preliminary brief which was submitted here, a short 28 page brief, was supplemented by a short two hours of oral presentation during which time counsel for the hardware people introduced the point of resale price maintenance in drug stores. It is his presentation upon which members are now asking questions. Mr. Carter is one of the few government members appearing on my list, since "government" is mentioned so often; and since the list is largely composed of Conservative, CCF and Social Credit members, why is it that when Mr. Carter asks a proper question I am asked "why are we bringing up drug stores".

Senator Golding, I would have been delighted this morning if you had pointed out that the witness was not counsel for the drug business.

Mr. CROLL: Would you look back at page 49 of the Combines Committee Legislation report.

The CHAIRMAN: Yes, there is Mr. Fuller's evidence.

Mr. CROLL: Read it, Mr. Chairman.

The CHAIRMAN: I do not think there is any need for me to read it. I merely give it to Mr. Dunn. Will any one question that my summary of Professor Fuller's remarks was not accurate. He was the expert witness for the Canadian Pharmaceutical Association and the evidence appears at the bottom of page 39. It is on that statement, since the witness has raised the drug question, that Mr. Carter asks the question.

The WITNESS: I still think, if there is any point of order for a witness—

The CHAIRMAN: There is none.

Mr. THATCHER: There is.

The CHAIRMAN: A member, yes. Not for a witness.

The WITNESS: I was partly answering a question there and I think I should be permitted to finish it. If you rule otherwise I will be bound by the ruling but I was asked about Bayer aspirins.

The CHAIRMAN: You were asked a specific question about Bayer aspirin.

The WITNESS: You asked me if somebody was not pushing prices up.

Mr. CARTER: You made the statement this morning and I cited those two instances and asked whether the consumer was not justified in his opinion that somebody was pushing prices up higher than they should be.

The WITNESS: The answer is to be found in the evidence I gave, that price maintenance breeds imitation of brands. I read to you from Mr. Nystrom to the effect that when you get a manufacturer producing a brand it breeds manufacture of comparable items which are not branded.

Mr. Gorsline told us today about a woman going in to buy a kettle. One may be \$16.50 with a well-known name on it and another may have no name on it and it will sell at \$1 or \$1.50 less. The woman buys the \$16.50 kettle—and that is free enterprise. She could have bought the cheaper which would not have had a brand name.



I suggest to you that if you go into a drug store and ask for aspirin or headache tablets and the druggist says: Here is Bayer aspirin in 24's at 29 cents, and here is ASA at some other price, and here is one I made up myself which I can sell to you for 10 cents—would you buy the 10-cent one? That is your choice—

The CHAIRMAN: Wait a moment, you have asked Mr. Carter a question.

Mr. CARTER: My answer is—

Mr. THATCHER: "Yes" or "no".

*By Mr. Carter:*

Q. If the druggist assured me the one at 19 cents was in every way comparable to the one at 79 cents I would buy the 19 cent product.—A. Yes, that is free enterprise. That is your choice.

The CHAIRMAN: That is why we have pure food laws. You have had only two questions, Mr. Carter, and you can have one more in view of the fact that other people have taken so long.

Mr. CARTER: The witness this morning introduced the principle of social control and I just wonder if he considered these two examples as examples of social control?

The WITNESS: The example I have given you—when you go into a drug store you make the decision on what you will buy.

Hon. Mr. GARSON: Is that social control?

The WITNESS: I am coming to that. If he quits buying Bayer aspirins because of the other one at 10 cents—and because there are one million others like you looking for a bargain in Bayers aspirin,—if you quit buying Bayer and buy the nameless packaged aspirins at 10 cents then the Bayer aspirin people will of necessity go out of business.

Mr. CARTER: How am I going to know unless it is equally featured? If he features both equally I am in a position to make a choice but if I do not know about the other one and he does not tell me, then how can I?

Mr. HEES: Go to a druggist that does.

The WITNESS: Mr. Hees, please—

The CHAIRMAN: I have trouble with him too.

The WITNESS: Then I have something more in common with the chairman. One of the parts of the British report which I read this morning said that they felt in their opinion that the manufacturer who made brands known, a free manufacturer, had an interest in maintaining that brand through to the purchaser; and that was an interest that he should protect.

The Bayer people have certain procedures to follow to make their aspirin up to a certain quality and there are millions of people who buy Bayer aspirin today all over Canada and the United States at prices higher than ASA, for instance, which is also very well known in Canada. You can see them side by side in any drug store.

Mr. CARTER: I have had sufficient on Bayer aspirins.

The WITNESS: I still have a headache.

The CHAIRMAN: Your last question, Mr. Carter.

Mr. CARTER: The witness before you said, I think, that efficiency of business did not increase with its size.

The CHAIRMAN: Order.

The WITNESS: Of a retail business?

*By Mr. Carter:*

Q. The efficiency of retail business did not increase with size?—A. That seems to be a fact.

Q. So it does not follow that business, because it is bigger, would be more efficient?—A. Figures indicate that it is less efficient.

Q. Some witnesses have maintained, and I think some members have expressed a fear, that this price maintenance if abolished would result in the big retail store business having an advantage over the small one?—A. They will have an advantage because they will have products which the small one will not have and which they cannot buy at competitive prices.

Q. You quoted the instance of the Beaver saw and you said if you went to Eaton's and bought a Beaver saw for \$100, of that \$100 \$32 went to Eaton's overhead and operating costs?—A. That is right.

Q. It might be possible that you could go to a small independent store and pay \$100 and out of that \$100 only \$20 would go for overhead costs?—A. That is right.

Q. So the little man would have an advantage of \$12 over Eaton's?—A. On operating costs only.

Q. Yes, one more question Mr. Chairman and it is this: Are the little men to be prevented from passing on part of the benefit—that \$12—to their customers?

The CHAIRMAN: That will be Mr. Carter's last question and you can take as long as you want to answer it.

The WITNESS: I will not be over an hour in answering.

The answer is this: He cannot pass it on because it costs him—27 from 35—7 per cent—it costs him 8 per cent more to buy the thing than it costs Eaton's. It more or less evens out. The big store buys cheaper and has a much larger gross profit but the big store has a higher operating cost. Therefore, when it comes to the end the net profit of the big store is 2.7 per cent.

MR. CARTER: I think we can shorten it. Let us take the case where the little man does have the advantage, should he be prevented from passing that on to the consumer?

The WITNESS: It is a hypothetical question. He cannot have the advantage because he cannot have comparable buying power. He is faced with the costs of these goods of 64.7 per cent for the chain store as against 73.9 per cent—practically 74 per cent.

The CHAIRMAN: Mr. Jutras.

MR. JUTRAS: Mr. Carter pretty well covered some of the points I intended to but I would like to get back to the question of the consumer, as Mr. Carter did. You mentioned this morning, and I thought it was interesting, that you had conducted a personal survey with the consumers—some kind of a Gallup poll. If I gathered your statement correctly you said that the overwhelming majority of the public was against price maintenance—

The CHAIRMAN: No, no; against legislation.

The WITNESS: I am afraid I may have misled the committee on this and I do not want you to think I made an extensive survey, but the point I was making was that I have been very much interested in this matter now for a couple of weeks. When I meet somebody for a cup of coffee I say: What do you think about price maintenance. And they say: I don't like price fixing.

They do not like price fixing by anybody. That is where I would have to give him the whole brief and take two hours to explain before they would really see the whole story and then get this glimmer of an idea of social control

of prices and understand this price maintenance. Just as Mr. Carter is willing to buy a substitute brand—and when you explain that all to the man of average intelligence he sees it entirely differently and says: that sounds all right.

The public is not informed on it and never will be, I suggest. It is too technical. Look at the difficulty we have had here.

*By Mr. Jutras:*

Q. If I may break in I do not quite agree that the opinion of the public on the matter is of no importance?—A. I did not say it was of no importance.

Q. You say they are not informed? It is true they are not informed as to how price maintenance is arrived, at or as to how it is enforced and all those details, but I submit the public is able and is in a very good position to judge the effect of the practice, and possibly we can and should attach a little more importance to that feeling.

Now, you admit that generally speaking the public, or Mr. Consumer, is against or does not feel favourable to this practice of price maintenance. Now, there may be a little more to it than to dismiss the man and say: Well, he just does not know. I do not think that is quite doing him justice.

I would like to interject this now. You referred this morning to the fact that there was a trust complex in the United States, and I might suggest there is possibly a bit of 'expert complex' in this country. Possibly that is one of the things that worries the consumer.

You say that he does not know, but maybe he is of a different opinion. Maybe he thinks that he knows?—A. Oh, they usually do.

Q. Well, even on this thing, maybe he does not like the idea that Mr. Manufacturer, Mr. Distributor, and Mr. Retailer are setting themselves up as experts who are to determine the products, and the quality of them, that he shall get? He knows or there is an inference that he has no say in the matter, and that is one of the points that worries me a bit.—A. May I answer at that point?

Q. Yes?—A. The answer is perfectly simple. He simply buys another product like Mr. Carter buys the nameless headache powder, and the Bayer people eventually feel the pressure of competition and they have got to bring their prices down or quit production. They cannot carry on business. The Bayer people have got to manufacture at a profit. The wholesaler has got to deal with it at a profit. The retailer has got to sell it at a profit or they do not stay in business. Now, you take...

Q. Mr. Dunn, just to shorten the discussion...—A. Please...

The CHAIRMAN: Just in fairness now...

The WITNESS: You asked me a question.

The CHAIRMAN: When the member is content with the answer I think he should have a chance to get one or two questions in.

The WITNESS: All I want to say is that he has an idea that the price is being fixed in a closed room with the manufacturer, the distributor and the retailer. All right, he just does not buy the product, so the product suffers and there is where social control of prices comes in. As I read to you earlier this afternoon, and as I said to Mr. Carter, standardization of quality and price breeds competition. That is why you can go into Simpson's and buy a Frigidaire, an electric refrigerator, or you can buy a Supreme, or whatever the name is, but nobody knows who made it. You can look at the two and decide you want to buy the cheaper one. Now, there is the competition against Frigidaire, which is a brand name that they advertise all over Canada. That is where the competition comes in. I do not want to upset your schedule of time, Mr. Jutras, but this question of the consumer as to what he thinks at this time on this thing, I do want to read what the British Committee...



The CHAIRMAN: We have on file, Mr. Witness, a brief from the Canadian Association of Consumers, from the four great labour congresses of Canada, from the Canadian Federation of Agriculture, and so we know what the Canadian consumer thinks, and there is no need to refer to what the British consumer thought of this practice in 1948. If you want to read the brief supplied by the Canadian Association of Consumers, then we would be glad to have your views on that.

The WITNESS: It comes into this question of the knowledgeableness of the public.

Hon. Mr. GARSON: Why? Are we all such a group of morons in this committee that we have to have a witness come from Toronto to explain to us what the British consumers think, or what the British report means? This is all before us in very simple language and we can read it ourselves.

The WITNESS: The reason I have stressed this British report is because it is not referred to from the beginning to end of the MacQuarrie report, except a little bit, about one-half inch, referring to the terms of reference. I think it is a significant document and I am asking this committee to consider it, and when a question like this comes to me, asking me what the consumer thinks, I think it is relevant and informative to hear what the British consumer thinks.

The CHAIRMAN: It is much more important to hear what the Canadian consumer thinks.

Mr. FULTON: Mr. Jutras asked the witness a question as to how the consumer felt, and in fairness he should recognize it was in reply to Mr. Jutras' question that the witness was answering. He surely has the right to answer; whether we agree or do not agree with his answer is a matter for us to determine.

Mr. JUTRAS: On a point of order. We had left this first question and we were down to a different point when the witness started out on this.

Mr. FULTON: I am sorry, I must have misunderstood you too.

Mr. JUTRAS: However, I have no objection if you want to go all over the world telling us of consumers' reactions, but the point and the thought I was making is that the consumer feels that price maintenance is a restraint on his method of expressing his wishes to the manufacturer, to the retailer and to the distributor. Now, you answered the question partly by saying that there is still competition. I do not quite agree with you that there is full competition. Of course you will agree with me that although there is competition it is a restricted competition under the practice of resale price maintenance. Let me take this example, for instance. That comes back to the consumer. . .

The CHAIRMAN: It is no more of an outrageous assumption than Mr. Hees made in his statement.

Mr. HEES: Nobody is objecting.

The CHAIRMAN: But I am sitting here looking at all of you.

Mr. JUTRAS: Let us get back to a concrete case that was brought up here yesterday. You know, of course—and this is an obvious statement—that the consumer as a whole loves a bargain. Now, possibly he is somewhat worried that if the practice of price maintenance becomes more general this will tend to disappear. I know you will say "Well, there will still be more competition at the manufacturing level", but still these bargains will be very much restricted if the practice tends to be generalized, and let me finish my

question, and that leads into the statement of Mr. McGregor that you questioned this morning, that the growth of the practice in the country was alarming, and I submit that is one of the people it is alarming, the consumer.

The WITNESS: It gets longer and longer. I hardly know where to begin.

Mr. CARROLL: First Mr. Jutras expressed an opinion of his own and he is asking you a question as to whether that opinion is correct. I think that is the question.

The WITNESS: You expressed the opinion that the consumer feels that under price maintenance he is not getting a bargain.

*By Mr. Jutras:*

Q. The consumer feels that under this practice he will have less and less to say as to the determination of the quality, the type, the price of the commodity that he wants.—A. One answer to that, of course, is the actual prices that we see now. I only know of a few products that have gone up as much in price maintained articles as it has in other articles. As Mr. Garson says, in the outlying places the transportation cost is absorbed by the dealer, but I think the fundamental answer to the whole thing is this, that the product cannot stay in the market for long unless all the parties who are in the distributive process are making enough money to stay in business. Now, we all like bargains, yes.

Q. Will you allow me one interjection? I will agree with you that far, that the product cannot stay on the market for as long, but I would say that under price maintenance it will stay a lot longer. That is the point.—A. I cannot agree with you. That is not my view.

The CHAIRMAN: Thank you, Mr. Jutras. Mr. Fulton.

*By Mr. Fulton:*

Q. Mr. Dunn, on page 31 of your brief you make reference to the fact that the independent retail hardware dealers compete on an unequal basis with chain stores and department stores for their share of the retail business in Canada, and you refer to table No. 2 to show the comparative gross profit figures as illustrative of the weapon of bulk buying power with which the chain and department stores compete against the independent dealer.

Now, I believe you brought with you a witness who has made a special study of that matter. Have you the witness to assist you?—A. Yes, I would like to ask Mr. Hougham to answer that.

The CHAIRMAN: Order, gentlemen. Mr. Dunn, would you introduce Mr. Hougham?

The WITNESS: I would like to introduce Mr. George Hougham, who comes with us as a consultant to the association. Mr. Hougham has had, I believe, about 37 years practical experience in the marketing field in Canada, having had a close association professionally with the Canadian Retail Federation and the Retail Merchants Association. Mr. Hougham is now retired, and appears in a consultant capacity from time to time for the Retail Merchants Association. We are so interested in this subject that we felt that his experience would help us in our contribution, so perhaps Mr. Fulton would ask the question now, and perhaps Mr. Hougham might be permitted to be seated.

Mr. George Hougham, New Westminster, B.C., Consultant, Ontario Retail Hardware Association, called:

*By Mr. Fulton:*

Q. I was just quoting the passage on page 31, where the subject of chain and department stores is introduced, and I want to ask you whether you can expand upon the statement contained there at page 31 and tell us whether, in

your opinion, elimination of price maintenance would, as has been alleged, benefit particularly the large department stores, or what is the situation in that regard?—A. I should think, Mr. Chairman and gentlemen, that it would improve their competitive relationships. Yes, I think so.

Q. Have you with you, either on paper or in your head, any figures, Mr. Hougham, or if you have no figures can you tell us with some degree of particularity what has been the trend with respect to the volume of business done by chain and department stores in Canada as compared to the United States, what is the general comparison between the volume of business done by the large chain and department stores in the two countries?—A. I should think, sir, my figures would perhaps hardly be applicable, but they may be indicative. If you would refer, as some of you must have done at some time or other, to the report of the Price Spreads Commission of 1934-1935, my recollection is that on page 207, I think it is, under the caption of the chapter on distribution, I think the statement is made to the general effect—I used to be able to quote this with a greater facility than I do now because I was involved in it at the time—but, subject to those reservations, I think it can be found that the statement is that the concentration of economic power in the field of distribution in Canada is greater than for any other country for which statistics are available, and, still quoting from memory, I think it is said by way of comparison between two countries that some 34, I think it was, department stores in the United States at that time, and I recognize that that was some time ago, did approximately 17 per cent of the total departmental store business in the United States, but in this country three department stores did 80 per cent of the total department store business, and of that 80 per cent, one company did approximately 7 per cent of the total Canadian business. Whether those figures would be accurate in terms of today's volume...

Hon. Mr. GARSON: You do not mean to say that one did 7 per cent, you mean to say 70 per cent?

The WITNESS: No, 7 per cent of the total business of the country.

*By Mr. Fulton:*

Q. In other words, three department stores did 80 per cent of all department store business, but one of them did 7 per cent of all the retail business in the country. Is that right?—A. Yes, I think that is correct, but the report will correct me if I am wrong.

Q. Was that company named?—A. Yes, it was The T. Eaton Company.

Q. Do you know whether that company has since acquired other large retail outlets?—A. Oh, yes, it has.

Q. Where?—A. Notably in Vancouver, where they have taken over David Spencer.

Q. They have taken over the David Spencer Ltd. business all throughout British Columbia, have they not?—A. Yes.

Q. You are aware, of course, of the fact that The T. Eaton Company has indicated to this committee that they are opposed to the practice of resale price maintenance?—A. Yes.

Q. And I think you have said already that in your view the elimination of that practice would tend to benefit mainly the large department store?—A. I think that would be the inevitable tendency.

Q. Do you see any connection between those two sets of facts, The T. Eaton Company's attitude and your opinion which you have just expressed?—A. I do not care to impute motives or to make general inferences—I do not think this is amusing, Mr. Chairman—



The CHAIRMAN: No, it is certainly not. It is so unusual we are gratified to have you make such a straight statement.

The WITNESS: But I would think that perhaps—I know I should not be talking for The T. Eaton Company—but that is perhaps the reason they adopt that attitude, the traditional attitude that they do not want to have anybody tell them what to do. I think they feel they are capable of directing their own business activities and want the utmost freedom of operation. I do not want to impute anything they would possibly repudiate, but I would think one of the reasons they are opposed to resale price maintenance is that it is not effective, it is not completely effective. In other words, in order that they might be protected themselves from price competition they would have to, and do, employ a very considerable shopping force to watch their competitors to see that their competitors' prices are comparable with theirs, and for that reason they do not want to be tied to a contract which binds them but does not effectively bind their competitors. That would be my inference.

*By Mr. Fulton:*

Q. We have heard of your very considerable experience, Mr. Hougham, in this field. Have you any comment to make on the probable effect on prices of either the continuance of the present practice of price maintenance or the abolition of it? In other words, if this legislation goes through and is effective, what will be the probable effect on the cost of living and on prices generally?—A. Well, under the relatively prosperous economy that we are living in now, if that is what you may call it, I suppose there would not be any immediately discernible effect. I would think that likely would happen, but if we should regrettably return to anything that bordered on the conditions that prevailed in the dark thirties, I am afraid that the conditions would be demoralizing. If I may express an opinion—and it is only an opinion, sir—I think possibly one of the by-products of a situation of that kind might conceivably be this: one has heard—and I have been hearing it here and reading it in the press—the continual reference to the competition between the very large organizations and my friends the independent retailers, and I speak of them in that respect because they were my friends for a great many years, I think we overlook the fact that in a period of tremendous competition for volume induced by low purchasing power what happens is a competition between large organizations, not with the sinister intent of putting the independent retailer out of business but to sustain their own volume, which they must sustain in view of the tremendous overhead they have by virtue of their operations. What happens there? History records it, and it can again happen in retailing, particularly in this country, that is, when the giants are contending the little fellow gets trampled underfoot because he is in the way. Furthermore, a conceivable by-product of that can be a merger, and a merger leads into combines. I am not trying to paint you a fantastic, outlandish picture, and if I go further than that and suggest to you that from combines you get government expropriation, which in the age in which we live is not so far-fetched a picture.

Q. Am I correct in stating you were intimately associated with the Stevens' inquiry?—A. Intimate is an understatement.

Q. Am I correct in stating that the very conditions which were investigated and which were disclosed by the Stevens' inquiry were the conditions which brought about the adoption of the practice of resale price maintenance on an expanding scale, as a measure of self protection?—A. Yes, I think that is a fair statement.

Mr. DUNN: I feel I was rather less than helpful to Mr. Jutras and I wonder if now Mr. Hougham could express an opinion on the problem raised by Mr. Jutras.

Mr. CROLL: You tell me the problem.

Mr. DUNN: The problem, as I recall it, was the consumer felt that because one product or group of products were price maintained that he was being asked to pay a higher price because it was something over which he did not have any control.

Mr. JUTRAS: Not quite. It wasn't just the question of price. I expressed in general terms that the consumer felt he would have less to say not only in price but in quality and the type of goods he wanted. I mentioned it had lessened competition and my friend Mr. Hees disagreed at that time and you too. Then I submit under a system of no price maintenance at all you have competition among manufacturers and on top of that you also have competition in their margin to the retailer. I agree there is still some competition at the manufacturer's level but I submit most of the competition disappears at the lower level.—A. I am sorry I find the question a little obscure and if I do not answer it it is not because of any intention to evade it. As I study the resale price maintenance principle I look upon it not precisely as some others talk about it. I think of it in terms of price stabilization and while it may seem on a superficial examination to be designed to protect a segment of the economy only I would think in the long run it can stabilize the whole economy. I do not want to make a statement of my views in the matter except in so far as it may be helpful. I listened to my good friend Mr. Fred McGregor for whom I have the greatest respect. I listened to him as an exponent of the school of thought which is represented by *laissez faire* free economy. That school thinks resale price maintenance impedes progress and maybe he is right, maybe that is so, but I suggest to you, gentlemen, that like it or not, whether it suits our political philosophy or not, we have emerged from that type of economy into an area of planned economy. I am not advocating it I am trying to analyse it. In the realm of produce you have ample evidence of it, marketing laws of various kinds, and if I may be facetious about it you have 24-cent Kennedy milk. I do not mean to be disrespectful but I submit there is ample evidence that we have introduced a regulated economy not merely as a temporary expedient but as a permanent feature to our economy. Now, something deemed to be sound in primary product marketing, with the establishing of a floor price is not considered sound if the manufacturer does it. It does not seem to me that is quite fair.

Mr. CROLL: Are you confusing the producer with the manufacturer?

The WITNESS: I am placing them in comparable categories. You may disagree, but that is the way I feel about it.

*By Mr. Jutras:*

Q. Isn't your conclusion there it leads to fair trade laws rather than a system of price maintenance established by the manufacturer?—A. Very well, sir, if that is correct it may well be. Then I enter at this stage a most earnest plea to you as a committee and to this government not to throw the baby out with the bath. If you are determined to get rid of this principle then at least give these people some protection against the thing which they fear most, and don't do one without the other.

*By Mr. Croll:*

Q. Will you finish the answer to that question? If we are determined to pass this Act what do you suggest we ought to do in addition?—A. Mr. Chairman, if I had a complete answer I wouldn't be sitting here probably. I will endeavour to answer it honestly and I answer it with the reservation I do not know how practical it may be. Could you not include in your Combines Investigation Act, or if necessary in some supplementary legislation,



a permissive clause which would permit a manufacturer to take such action as deemed to be appropriate, and you must set the limits legally, if he found that his product was being consistently used as what we have come to know as a loss-leader. I recognize immediately the difficulty in defining a loss-leader and so on, but surely it is not beyond the width and wisdom of our legislators to find that answer.

Mr. CROLL: I would like to ask Mr. Dunn a few questions.

Norman A. Dunn, Counsel, Ontario Retail Hardware Association, recalled:

*By Mr. Croll:*

Q. Mr. Dunn, when you were referring to the California law what law did you have reference to?—A. It is the fair trade law.

Q. Is it the fair trade law or unfair trade law?

Hon. Mr. GARSON: It is the fair trade law.

The WITNESS: There are statutes in some states called Unfair Practices Acts and I must confess a very small knowledge of the details of these American statutes. They are different to the so-called fair trade laws. In a sense they relate to a certain type of product and go much further than our section 498(a). They refer to certain practices that are deemed to be vicious in eliminating competition.

*By Mr. Croll:*

Q. They have references to the practices Mr. Hougham spoke about between large department stores?—A. I think so, yes.

Q. Now, you told us you made a study of this price maintenance situation over a period of some ten days of intensive study?—A. I prepared a brief.

Q. Had you been connected with it before?—A. No, I had not had professional connection with it. I have been connected with it for the last month.

Q. You carried on some sort of Dunn poll, you went around asking people, I won't suggest you dunned them, but you asked them their views and they opposed price maintenance?—A. When the subject was first opened up, yes.

Q. And you talked them down?—A. No, I didn't have time.

Q. You were meeting the same sort of people I was meeting. Now, do you know Mr. Justice MacQuarrie?—A. No, not personally, but I know his position.

Q. You know who MacIntosh is?—A. Sure, he stopped the railway strike.

Q. You have heard of the other gentleman, Curtis?—A. Yes.

Q. And Maurice Lamontaine?—A. Just by name.

Q. They gave this eighteen months' study.—A. I didn't know that.

Q. That is a fact, they gave it eighteen months' study. In the light of that they came to certain conclusions and do you suggest you would set up your conclusions as against theirs?—A. The answer to that is to be found in my comments this morning. One of their conclusions with which I take great exception, and with the greatest of respect to them, is on page 19 where they say the general level of prices is higher than if competition existed, and they give as their reasons the first five findings of the Federal Trade Commission and omit the sixth one which I read to you this morning. I think you got tired of me at that point, but I read it this morning where the Federal Trade Commission found as a fact that when price maintenance came into being there was a tendency for prices to be set at the level at which prices had been with the large-scale distributors. They quote five findings and omit the sixth and they say in the light of this evidence and the current information presented



to the committee it seems clear the general level of prices is higher with resale price maintenance than it would be if competition existed. I say that does not conform to the facts I have been able to find and it is defective because they do not quote the sixth finding.

Q. You have been able to find this in four weeks' intense study and they spent eighteen months examining all evidence?—A. I beg pardon, sir, that is begging the question. They omitted one of the findings I found and omitted a finding that would not support their statement.

*By Mr. MacInnis:*

Q. I am trying to find out what is the underlying basis of price maintenance?—A. The purpose of resale price maintenance, Mr. MacInnis?

Q. Yes.—A. I will try to be as brief as I can. Have you any shorter questions you could ask me now?

Q. You said in answer to someone that if the legislation was passed that the first result would be the price of maintained articles would go up?—A. Yes.

Q. You agree to that?—A. Yes.

Q. Now, if the price of maintained articles would go up then wouldn't your profits go up too?—A. Well, one thing that would happen immediately would be that Mr. Gorsline would charge in his transportation. Another thing is on electric light bulbs where now he is only getting 25 per cent, he is going to say, "I think I should get 33½ per cent if I am going to maintain a balance of business and stabilize my products".

Q. Because if you could increase the mark-up on light bulbs your profit would go up?—A. Yes.

Q. If that is going to be the result how is it going to put people out of business?—A. Up to this point, as Mr. Hougham has told us, it would not have very much effect but then you come to the United States experience. He raises his price and a week later a chain store or a large unit of some kind drops the price of electric light bulbs from 50 cents to 39 cents, what happens to the electric light bulb business—it just stops. People with their natural canniness will buy at the cheapest place. The merchandise channels into the big unit and eventually the small unit has not enough money and its profits are gone. Isn't it quite easy now for you to tell us the purpose of price fixing?—A. It is.

Q. It is to eliminate competition, isn't that the purpose of it? May I read you a passage from the report of the Royal Commission on Prices, it is at page 28:

Resale price maintenance, like other forms of restrictive practices, does offer what appears to the manufacturer and distributor to be a happy relief from the unending struggle against the harsh correctives of the free market system.

Will you agree with that?—A. Yes, I told you what this harsh corrective was. It was a harsh corrective when the Ingersoll watch disappeared off the market and that was because of what you like to call free enterprise, free trade, and I point out in many cases it may be the result of ruthless trade, ruthless competition and ultimately will be ruinous to the product and harmful to the public. You see, it is a matter or words.

The CHAIRMAN: It is.

*By Mr. MacInnis:*

Q. I want to put you straight. I am not advocating free enterprise; you are the advocate of free enterprise and all I want you to do is to carry out free enterprise. Do you get the point?

I will quote now from your brief on page 21. You have there quoted from the report of the Lloyd Jacob Report in the old country?—A. Yes, on mark-ups.

Q. You quoted that because you approved of the sentiments of any parts you quoted?—A. I quoted it, in fairness, because I am considering the question of mark-ups, and I think it is fair that this committee should have it.

Q. Well, I think so too. Now, there has been great stress made in this committee on getting mark-ups for price maintained goods and non-price maintained goods. Let me read this from page 21 of the Lloyd Jacob Report—  
—A. Page 21 of my brief?

Q. Yes.

On the whole the margins allowed on price-maintained goods appear to be lower than those taken on free-price goods. The circumstances vary, however, from product to product and from trade to trade. We do not attach any great significance to the fact that margins on branded and price-maintained goods—especially on well known lines are generally lower. Indeed we should have been disturbed had this not been the case, for such goods do not ordinarily require *inter alia* the same sales effort as unbranded goods. There is therefore no comparison between the two classes of trade.

—A. I read that this morning.

Q. Do you agree with it?—A. On the whole, yes.

Q. Well then figures showing mark-up on price maintained goods and non-price maintained goods would not be of any value to this committee in coming to a conclusion?—A. They will show which are higher.

Q. But this paragraph states definitely that there can be no comparison. Is that not what the paragraph says?—A. I learned many years ago, Mr. MacInnis, that it is extremely dangerous to yourself and to everybody within earshot to take a sentence out of context and say: "That is it."

Mr. HEES: Hear, hear.

Mr. MACINNIS: Just a minute.

The WITNESS: You asked me a question so please let me answer it.

Mr. MACINNIS: You are accusing me of taking that sentence out of context.

Mr. FULTON: He did not.

Mr. CROLL: Yes, he did.

Mr. MACINNIS: I have taken your brief—

The WITNESS: You cite one sentence and you say there is, therefore, no comparison between the two classes of trade. You say, therefore, the figures are useless.

Hon. Mr. GARSON: Figures on those.

The WITNESS: Comparative figures on price maintained goods and others.

Mr. MACINNIS: Yes.

The WITNESS: I was relating that to the rest of this interesting report and you will see that this committee had discerned the reason why price mark-ups were lower on branded goods. They discuss with consumers the fact that consumers like to buy branded goods because they can buy them quickly, and make decisions quickly—and you have got to relate the whole thing.

Mr. CROLL: You did not do that; you quoted that and stopped; and started on a new thought.

The WITNESS: Mr. Croll, I said this morning, also when you were out, sir—

Mr. CROLL: I was out.

The WITNESS: I commended the Lloyd Jacob Report to the study of every member of this committee—from cover to cover; 122 pages of it. But sir, in an effort to make some kind of an intelligent presentation it was not feasible that I should quote the entire 122 pages and therefore, I attempted in some sort of logical fashion to take the parts that were related to these subjects under discussion. I endeavoured to be as fair as possible in doing so.

Mr. MACINNIS: If anything was taken out of context you must have taken it out, because I am quoting what you have here. I am pointing to the general conclusion drawn by it and let me read the last part again:

We do not attach any great significance to the fact that margins on branded and price-maintained goods—especially on well-known lines—are generally lower. Indeed we should have been disturbed if this had not been the case, for such goods do not ordinarily require *inter alia* the same sales effort as unbranded goods. There is, therefore—

and this is not out of context, it is the conclusion, the summing up of what they have to say “—there is therefore no comparison between the two classes of trade.”

One is a protected trade and the other is competitive.

The WITNESS: I do not read that as their stating it as being unreasonable to compare the two classes. They say that at the point of sale a different operation takes place. When Mr. Carter goes in to buy Bayer aspirins, he knows about them, he has heard about them for twenty years and he buys them without question. However, before he buys the 10 cent aspirins he is going to have a lot of discussion: Is it going to be safe; is it going to be just as good—and that is why they say there is no comparison because they are two different kinds of trade.

Mr. MacInnis, that was one of the failings of the MacQuarrie report—they did not restrict maintenance to branded goods. I emphasize that this morning. In their definition of price maintenance they did not refer to its restriction to branded goods.

Now, sir, when you refer to branded goods, as you have in the part that you have read twice and which I read once this morning, there is an entirely different type of operation. The customer knows before he goes into the store he wants a mixmaster. It is a simple operation to sell him. It is a matter of having it there and you sell it. I am not an economist, as the chairman has said—and that is another thing on which I agree with the chairman—

The CHAIRMAN: I do not recall saying that, but somebody said it.

The WITNESS: I thought you said it sir, but someone said it.

However, the fact is when you go in to buy a branded article it is a simple operation to sell you. When a customer goes to buy an unbranded article he has to be sold; he has got to be told its qualities; who made it, who will service it; who will stand behind it—but that does not apply to a branded article. Therefore they say, and I agree with them—and I agree with it a little more than before we got into this—that there is no comparison between the two kinds of trade. One is a branded article well-known to the customer before he walks into the store, and the other is an unknown article, namely something which has to be sold to the customer—and there is no comparison. The fact remains, nonetheless, that it is interesting to note in the case of branded goods that since 1939 they have not risen half as much as the national commodity index. The other goods that are not price maintained and require more selling have risen as much as 163 per cent. That is a significant fact and I suggest every member of this committee should consider it well.

The CHAIRMAN: Your time is over, Mr. MacInnis, and you have only asked two questions.



Mr. MACINNIS: I am not going to ask any more questions but I will observe that I am only glad I did not ask ones with which Mr. Dunn did not agree; because God knows when he would have finished talking.

The CHAIRMAN: Mr. Harrison?

*By Mr. Harrison:*

Q. Mr. Dunn, I think you ought to be able to answer these questions?—A. Me, personally?

Q. Yes.—A. I thought I was going to get a rest.

Q. From your display here so far I do not contemplate that you will have too much trouble with my questions.

Mr. MACINNIS: You will have trouble with the answers.

The WITNESS: Thank you.

*By Mr. Harrison:*

Q. You made the statement this morning that price maintainance has been a natural economic growth?—A. Yes.

Q. What limits do you envisage to this economic growth?—A. Well, Mr. Harrison, that is the difficulty of our economic growth. You can only tell it from history up to this point, and you cannot always tell from history in the past what is going to happen in the future.

Q. What has been the history?—A. I mentioned one thing—this shipping ring which I got into this morning and did not know too much about, but I think I was reasonably sound on it. There was very acute competition for years, which practically put ships off the North Atlantic.

Q. I am speaking of price maintenance. What has been the history of price maintenance? How has it spread over the period of history.

The CHAIRMAN: In Canada?

The WITNESS: Are you limiting me to Canada?

*By Mr. Harrison:*

Q. Yes, because we are interested mainly in Canada.—A. Well, all right, but we have not got as many figures in Canada as in the States and that is why I sometimes bring in the States.

Q. What has been the history in Canada of price maintenance?—A. The history has been as I gave it to you, that there has been by and large an orderly marketing process on articles subject to price maintenance.

Q. Well, I mean the incidence of price maintenance?—A. Well the little survey we made for you on those two pages shows that since 1939 the price has gone up about 60 per cent to 70 per cent.

Q. I do not seem to get my point.

Mr. CROLL: The percentage of increase?

The WITNESS: I am sorry.

*By Mr. Harrison:*

Q. The actual amount by which price maintenance has been extended over the years?—A. Well I can answer that because, factually, we know or we make a very reasoned guess that it represents 7·89 per cent of the goods held in the average hardware store. We think it is 10 per cent to 15 per cent dollar-wise, and the Lloyd Jacob Report said 5 per cent to 10 per cent.

Q. How long has it taken that situation to come about?—A. Since about 1927.

Q. Then I come back to my question of what limits do you envisage to this economic growth of price maintenance? What are the limits? When will it reach its total 100 per cent of business or will it ever reach that?—A. Well, the

pattern up to the present time has shown, as I endeavoured to show from those five points in Nystrom—that with items that have those qualifications there is a tendency. On items which are very simple to purchase, such as the can of peas I mentioned this morning, there has been very, very little indication of price maintenance going into that field.

Q. I just want to know when you think we will get to a total of 100 per cent price maintained—if ever?—A. No, never.

Q. Just what are the limits?

Mr. FULTON: Are we not here really asking the witness to get into a field in which I do not think he is qualified to speak?

The CHAIRMAN: He has been in quite a few fields where I do not think he was very well qualified.

Mr. HARRISON: What is your idea of the amount that it will expand?

The WITNESS: I am going to ask Mr. Hougham to answer.

Mr. HOUGHAM: I do not think that anybody can answer that question.

*By Mr. Harrison:*

Q. The second question I would like to ask about—and you said before it was a hypothetical one but it may become a real one—is how would you deal with a combine of manufacturers who are in a position to control prices at the retail level, although they have varying prices in the wholesale level? If you were in Mr. Garson's shoes how would you go about controlling such a combine at the manufacturer's level?—A. All I can say is I have every confidence in Mr. Garson's assistants, under his guidance, working out ways and means of catching a combine or, what they said back in 1873 was a conspiracy. Now, our present Act may not be good enough. It may not be tight enough.

Q. How can he obtain a conviction by proving a conspiracy at the retail level—which could be brought about by a tight enough combine of manufacturers?—A. All I can say is I think our present endeavours relate more to vertical agreements than to combines pure and simple, or grades of them. I can only say I leave it to, as Mr. Hougham said, the wit and something else of Mr. Garson and his department, in which we have the greatest confidence. They should be able to develop a formula to catch some of these combines which are not just clearcut combines under the Act as it stands now. If they are combines they are conspiracies nonetheless. As Lord What's-his-name says, If they are horizontal agreements or open or outside of the law let the Act be tightened up.

The CHAIRMAN: Mr. Harrison, there are just five minutes and since Mr. Garson is last on the list and has not had a chance to question, would you give him your last five minutes?

Mr. HARRISON: I can if he wishes.

Hon. Mr. GARSON: It is all right.

*By Mr. Harrison:*

Q. Along that line has it ever appeared to you that was the possible direction of this proposed legislation?—A. That does not appear so to me at all, because I do not admit for one moment that there is anything alarming about vertical agreements as being an aid to horizontal agreements. If it is a horizontal agreement, open or outside, then I say cut it down. If it is a vertical agreement I say do not make it illegal just because somebody thinks it provides a breeding ground for horizontal agreements.

Q. I think my next question has been anticipated a little bit by some of the previous members, which is natural as I am at the end of the list.—A. I hope Mr. Garson's have all been anticipated.

Q. Do you think the discontinuance of price maintenance will afford lower prices to the consumer?—A. The continuance?

Q. The discontinuance? If we go through with this legislation will it afford lower prices?—A. Not on the evidence as I see it. I think that immediately some things would be higher. It would be the same thing I went into with Mr. MacInnis. There would be the question of price cutting wars and products being discontinued.

Q. Would it not then follow there would be no loss of profit and therefore increased ability to stay in business by way of enacting of the proposed legislation?

The CHAIRMAN: You have just said that prices will not fall?

The WITNESS: I said prices won't fall so your reasoning is—

*By Mr. Harrison:*

Q. You tell me the prices won't fall, so they will increase. Will it then not follow that there would be no less profit; there would be a gain of profit, and therefore increased ability to stay in business.—A. Mr. Harrison, I went into that at some length with Mr. MacInnis. There would be a temporary increase in prices in spots, and then the secondary stage will come and the big purchasing powers or certain units will swoop down and some of the boys will go by the boards—and some of the products.

Q. Another point you mention here was efficiency of the chain stores as compared to that of the small stores. If the difference in efficiency of chain stores as compared with the small retailer is as marked as you say—I think you said some 32 per cent overhead as against 20 per cent—and if that difference is only offset by bulk buying of the chain, if price maintenance is abolished do you think the chains would have an advantage? I think your answer to that previously would have been yes, would it not?—A. My answer goes back to the same thing—that even the chains cannot stay in business unless they can make a profit.

Q. That is right?—A. However, they would have an advantage. They can cut prices on certain articles to get people into their stores and do a lot of business, but they have to restore those prices back to economic levels and they must make enough profit to stay in business. That applies to the T. Eaton Company as well as to the crossroads store.

Q. Eaton's have the advantage of being able to buy at a discount?—A. Yes.

Q. Well is not the remedy in the hands of the manufacturer—to protect himself? Supposing a situation develops where a lot of small retailers are afraid that their sales will be channelled to the chain stores?—A. Yes.

Q. Is not the remedy in the hands of the manufacturer and he can protect the retailer by withdrawing those discounts from the larger chains?—A. But you see, Mr. Harrison, as I said already even one company such as the T. Eaton Company with 7 per cent of the total—is that it?—

Mr. HOUGHAM: In 1935.

The WITNESS: That the three stores do.

Mr. HOUGHAM: 80 per cent.

The WITNESS: 80 per cent?

The CHAIRMAN: Of department stores?

Mr. CROLL: Yes.

The WITNESS: What is the total percentage of the three stores—can you tell us?

Mr. HOUGHAM: No.



Q. Mr. Hougham has said already one company, the T. Eaton Company, had 7 per cent of the total retail sales in Canada, and that three stores had 80 per cent of the department store business. What is the percentage of the total business of the three stores?

Mr. HOUGHAM: I couldn't tell you.

Hon. Mr. GARSON: What is it now?

The WITNESS: Have you got any figures from Eaton's, Mr. Garson?

Hon. Mr. GARSON: No.

The WITNESS: That is all I have from reading the proceedings of this committee a motion was defeated to get more recent figures. My direct answer, Mr. Harrison, is, assume for the purpose of this discussion that one company does 7 per cent of the total business of Canada. It would be a hazardous business for any manufacturer to say, "We will not sell to them," because there are many manufacturers in Canada that are small. They are not all big firms like General Electric and the C.I.L., and they have their share of the Eaton business and they are not going to say, "To help this case along we are not going to sell to Eaton's at all."

Q. You are speaking of the present, but will this system increase greatly?—

A. It will get worse, it will be dangerous to the public.

The CHAIRMAN: We will adjourn until 10.30 tomorrow morning.

The committee adjourned.

## APPENDIX A

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A Submission

to

THE JOINT COMMITTEE OF THE SENATE AND HOUSE OF COMMONS

ON

COMBINES LEGISLATION

Prepared on behalf of

THE ONTARIO RETAIL HARDWARE ASSOCIATION

by

NORMAN DUNN

Barrister and Solicitor, 67 Yonge Street, Toronto

The Chairmen

The Joint Committee of the Senate and the House of Commons on Combines  
Legislation

Ottawa, Canada.

House of Commons,

Gentlemen:

*Position of the Ontario Retail Hardware Association*

The Ontario Retail Hardware Association was pleased to learn that the decision had been taken to refer proposed amendments to the Combines Act to your Committee for consideration, notably the matter of Resale Price Maintenance. This subject being one of the greatest importance in the economy of our nation, and being of more than ordinary concern to the retail hardware trade, this Association takes this occasion to make certain submissions to your Committee in the earnest hope that, sharing our view as to the importance of the matter, your Committee may be pleased to give the most earnest consideration to the matters which we feel compelled to bring to your attention.

The Ontario Retail Hardware Association was organized in 1906 for the purpose of furthering the interests of the independent retail hardware dealers throughout Ontario and the Association was incorporated under the laws of the Province of Ontario on the 17th day of July, 1922. While the Association in its inception, had a provincial objective, developments have indicated that the Association has a broader function in the national sphere as has been made evident by the fact that a number of retail hardware dealers in other provinces have become members, there being no other comparable association in existence in Canada. The Association therefore feels that it can speak out only for the retail hardware trade in Ontario but in a very real sense, in representation of the retail hardware trade throughout the nation. For your information the Association numbers among its active members a total of 1,471 retail hardware dealers or approximately 96 per cent of the retail hardware dealers in the Province of Ontario and on a national scale, this membership represents, including the members from other provinces approximately 40 per cent of the independent retail hardware dealers of Canada.

The Ontario Retail Hardware Association, while affiliated with the Canadian Retail Federation, having problems more specific than those of the Federation, finds it necessary to dissociate itself from the Canadian Retail Federation

with respect to the matters being considered by your Committee, and the Ontario Retail Hardware Association accordingly begs to make the following submissions for your careful consideration believing, as stated above, that our Association represents in a true sense the interests of every retail hardware dealer throughout Canada, in all a total of some 4,200-4,300 independent retail hardware merchants.

### *Position of Retail Hardware Merchants in the Canadian Economy*

The retail hardware merchants have a position of unusual importance in the Canadian economy. They represent a very large number of relatively small shopkeepers whose retail business in 1950 aggregated \$192,006,800.00.<sup>1</sup> They are engaged in a kind of trade in which the experience of older economies has demonstrated the independent retailer to be the best servant to the public. Accordingly, while retail hardware chain stores exist, it is clear that this type of merchandising unit has not developed to the extent in the hardware trade that it has in certain other trades, notably the grocery and variety trades. A competent American economist places the percentage of hardware business handled through the independent dealer as high as 95.5 per cent.<sup>2</sup> The reason for this is to be found in certain characteristics of the trade which are unsuitable for centralized chain store management on the whole. These characteristics which, while favouring the growth of independent dealers, but which, at the same time, present the independent dealer with grave problems of survival in the competitive retail field, constitute in themselves cogent reasons why the independent hardware merchant is vitally concerned with problems of pricing at the retail level. The characteristics to which we have referred and which apply most particularly to the hardware field have been listed by Nystrom as (1) relatively large investment per store, (2) wide range of stock, (3) large element of personal service connected with handling the products, (4) relatively slow stock turn-over, (5) considerable technical knowledge required in handling these products.<sup>3</sup> These very characteristics mean that the retail hardware merchant has a heavy stake in the economy of the country and must look for orderly selling of his merchandise from a long range viewpoint in order to succeed. It is a business for the long pull and there is no place in it for the retailer who desires to make a quick profit on a sudden turn of events or by short term manoeuvres.

The retail hardware merchant is in fact the housekeeper to the nation. His is the responsibility of providing a wide and varied range of merchandise necessary for the fitting, equipping and maintaining of the nation's homes in safety and comfort. He has been an aggressive merchant who has brought to the consumer's reach a range of merchandise, which, with the growth and the complexity of our life, and with the rapidly rising standard of living of our people, has resulted in a phenomenal growth in the number and diversity of articles handled from the day of the ironmonger of old. Indeed as the retailing function of the hardware man has broadened the trade has been the parent of many entirely new specialty trades, such as electrical appliance shops, wallpaper stores, plumbing and heating contractors, and many others.

Over and above all of these, the hardware retail merchant furnishes numberless specialized services for the consumer; the making of minor repairs to household equipment, maintenance of household and farm buildings, rental of specialized tools ranging from lawn rollers to extension ladders, to mention only a very few. It should be remembered also that the merchandise handled by the hardware merchant in very many instances requires a degree of

<sup>1</sup>Dominion Bureau of Statistics, Retail Trade Bulletin, January, 1951.

<sup>2</sup>Nystrom, Marketing Handbook, page 238.

<sup>3</sup>Marketing Handbook, page 237.



assembling, testing, and fitting before it can be used by the customer. Again, at the point of sale, many decisions of a technical nature have to be made before the customer is satisfied. Here the retail hardware merchant becomes not merely a salesman but in fact a friendly counsellor and adviser to persons in all walks of life on the many and varied problems relating to the building, repairing, refurbishing or equipping of their homes.

For the most part the merchandise carried by the hardware dealer is heavy and often bulky so that delivery is a question of the greatest importance, particularly in a country such as Canada with such large, thinly-populated areas relatively remote from large distributing centres. The following table which has been prepared from the records of the Association serves to illustrate graphically the way in which the enterprise of the retail hardware merchant has developed to assure the consumer a substantial degree of choice in retail dealers since effective competition at the retail level extends down to the very smallest community.

TABLE No. 1

Density of Retail Hardware Outlets  
in Communities of Various Sizes

Population	Total No. Towns	Total No. Stores	Average Member Hardwares per town
1,000 and under	87	426	4.9
1,000 - 2,000	70	147	2.1
2,000 - 5,000	62	169	2.7
5,000 - 10,000	26	88	3.4
10,000 - 25,000	22	145	6.6
25,000 - 50,000	5	32	6.4
over - 50,000	5	344	68.8

*What is Resale Price Maintenance?*

We note with regret that the definition of resale price maintenance suggested by the MacQuarrie Report<sup>4</sup> is in a measure misleading in that it does not refer to "brand" or "trade-mark" articles and in that it refers only to a maximum price. It is submitted that the definition given by the Federal Trade Commission in the United States<sup>5</sup>

Resale price maintenance is the marketing policy under which the manufacturer as owner of a commodity identified by brand, trade-mark, trade name, copyright or patent places restrictions on the price at which that commodity shall be sold by purchasers and sub-purchasers. might well be adopted by your committee.

It is to be noted that resale price maintenance is an entirely lawful marketing practice under the Common Law. Only in the United States of America was the practice found to be illegal and there only by virtue of the unique provisions of the Sherman Anti-Trust Act of 1890, under the provisions of which the courts held that neither a patent nor a copyright nor a trade-mark gave a product a proprietary right which the manufacturer could enjoy when his manufactured product had reached the hands of a retailer. An epidemic of "cut-throat" competition in that growing country at the turn of the century produced a demand throughout the entire United States for legislative action to permit resale price maintenance on a vertical basis where branded or trade-

<sup>4</sup> At page 7.

<sup>5</sup> 70th Congress House Document No. 546, January 30th, 1929, page 2.

marked merchandise was involved as the economists and subsequently the legislators of that country soon found that a highly reputable brand of merchandise, developed often at great expense and with great expenditure of technical skill and scientific experiments, a brand of merchandise which had great consumer acceptance and which was being marketed at a price highly desirable from the viewpoint of the consumer, could be destroyed in a comparatively short period of time by ruthless deep-cutting of prices by certain large scale retail organizations, notably chain and department stores. This price cutting, it was found, developed, first of all, a state of complete chaos in the market for the products, and, at the secondary stage, a point where the consumer's faith in the product has been shattered and in the result, the product disappeared from the market, in many cases, to the great loss of the consuming public. The instance of that well-known product, The Ingersoll Watch, was in fact largely instrumental in the aroused demand for fair trade legislation in the United States. Since that time legislation in forty-five of the United States and in inter-state trade has provided a legal framework for resale price maintenance and has, in effect, restored the ancient Common Law position under which resale price maintenance was a lawful, economically sound, marketing practice. It is the earnest submission of the Ontario Retail Hardware Association that this legal position in Canada should not be changed by legislation unless the Parliament of Canada has the clearest proof that resale price maintenance as employed in Canada up to the present time has been in fact detrimental to the public interests. Your Committee will, therefore, be giving careful consideration to the effect of resale price maintenance as an instrument of the marketing function in the Canadian economy. This Association representing as it does more than 4,000 independent retail hardware dealers throughout Canada, feels that it has factual information which merits your consideration.

#### *Extent of Resale Price Maintenance in the Hardware Trade*

We note the observations of the MacQuarrie report<sup>6</sup> that attention was not centred on individual cases of maintained prices on the ground that if resale price maintenance were restricted to a limited number of goods the problem would not deserve the Government's consideration. It is our submission that an enlightened approach to the impact of resale price maintenance on the Canadian economy requires an investigation of specific instances in which resale price maintenance is practised and that it is only by a consideration of a number of such specific instances that an appreciation of the over-all picture can be reached.

This Association maintains an extensive price index for the guidance of the retail hardware merchants throughout Canada as part of its service to members and it was, therefore, possible for us to reach a rather specific conclusion as to the extent of resale price maintenance in the hardware industry. This Association maintains a price index comprising approximately 26,530 items widely demanded by retail hardware merchants (not including specialized items such as wheel goods, sporting equipment and the like). A sampling of our price index indicates that of this total, approximately 2,094 items are subject to price maintenance of varying intensity. This indicates that of all items normally carried by the general run of retail hardware merchants, a maximum of 7.89% are under some form of price maintenance indicated or stipulated by the manufacturer. A precise appraisal of the percentage of dollar sales is more difficult to obtain but it is the view of this Association after consultation with representative members that the percentage of total sales in the retail hardware

<sup>6</sup> At page 17.



industry of items under some form of price maintenance would be from 10% to 15%. By comparison it is interesting to note that in the United Kingdom it is estimated that resale price maintenance in the hardware trade involves between 5% and 10% of the stock held by the average ironmonger.<sup>(7)</sup>

#### *Place of Resale Price Maintenance in the Hardware Business*

Some members of your Committee may well wonder as did the members of the MacQuarrie Committee<sup>8</sup> if a practice so limited in extent in relation to the total volume of retail hardware business is deserving of the Government's consideration. We believe the answer is to be found in a study of the general characteristics of goods which are subject to resale price maintenance in the hardware business and we suggest that the marketing practice of having retail prices stabilized by agreement between manufacturer and retailer has an importance to the retail hardware merchant out of all proportion, to the percentage of hardware business involved in price maintenance procedures at the present time. A survey of members of our Association revealed the informative fact that the great preponderance of articles which are subject to resale price maintenance are articles of a consumable or expendable nature. In other words, there is a tendency for resale price maintenance to prevail in that portion of the retail hardware merchants' business which comprises more or less frequent "repeat" business. More stable items which are subject to a very irregular demand by any particular household have developed a much smaller degree of price maintenance. It has been the experience of members of this Association that price-cutting both of the deep cutting variety and the moderate variety has a strong tendency to shake the confidence of the consumer in the general line of merchandise carried by the retail hardware merchants with the result that the practice creates a definite falling off in demand for a broad range of articles both price maintained and free priced items. A survey of members of this Association has produced the definite feeling on the part of retail hardware merchants that while the "loss leader" practice is disastrous to the retail merchant who has invested heavily in items often of the slow moving character, even the practice referred to in the MacQuarrie Report as "normal price reduction" causes customer dissatisfaction with adverse results far beyond the small price reduction which may have occurred in the case of the limited number of goods sold by the competitor in the particular line on which reductions were introduced. This Association urges your Committee to consider the serious consequences of even "normal price reduction"<sup>9</sup> so far as the retail merchant is concerned.

The impact of resale price maintenance on the economy of the United Kingdom was studied extensively over a long period of time by the Committee which reported to the Boards of Trade in June 1949. Elsewhere in this memorandum we quote the findings of the British Committee on the impact of resale price maintenance generally on trade and industry. At this time, we desire to place before members of your Committee certain observations of the British Committee with particular reference to the hardware trade.

The British Committee heard considerable evidence on the effect of "price-cutting" particularly in relation to items where a certain amount of technical knowledge was necessary at the point of sale and we think it convenient at this point to quote the Committee's summation of the evidence in this connection as it developed in their hearings:

<sup>7</sup> Report of the Committee on Resale Price Maintenance, London, England, June 1949, page 69.

<sup>8</sup> At page 17.

<sup>9</sup> MacQuarrie Report, page 20.



*Evidence Of Consumers*

50. For technical articles involving after-sale service the inclusion in the initial price of an allowance to cover a certain amount of "free" service for a defined period was generally approved. The representatives of the women's organizations told us that they felt that the practice gave an incentive both to the manufacturer and to the distributor to ensure that the articles reached the consumer in a satisfactory working condition in order to minimize expenditure in servicing. At the same time it provided a guarantee that additional and perhaps substantial outlay would not be required for a known period ever if the article turned out to require a considerable amount of attention. They felt that the convenience of knowing that future expenditure would not occur for a stated period outweighed the disadvantage of paying for service which in some cases might not be required.<sup>10</sup>

84. The disruption of trade in popular lines which is brought about by these activities appears to bear particularly heavily on the retailer who, by carrying in addition a wide range of relatively slow selling lines and in some trades by offering skilled technical advice to his customers, provides a service whose value may not be recognized until it has disappeared. Furthermore we see no reason to doubt the validity of the argument advanced by some manufacturers that the uncertainty brought about by prolonged price-cutting may make it difficult and sometimes impossible for them to maintain the quality and continuity of production of their branded goods. These manufacturers have stressed the importance of maintaining a regular and reasonably stable home market for British brands whose reputation is well established in export markets and of preventing fluctuations or deterioration in their quality.<sup>11</sup>

We were told that in the hardware trade the manufacture found resale price maintenance of value in stabilizing the market, and that this stability encouraged him to provide sales propaganda in the form of instruction leaflets, model boards, etc., particularly in the case of goods involving some new principle in their design of operation. It appears that many goods which at present are subject to resale price maintenance in this trade are those requiring technical service during and after sale, which may be given free or for a fixed charge.

In the past price-cutting has usually started at the retail end in a period of reduced demand and has, we understand, ultimately resulted in the manufacturer being asked to supply cheaper goods. We were told that as a result the quality of branded articles had been debased, particularly in the late 1920's and early 1930's. Examples of this debasement quoted to us were builders' ironmongery, digging forks, aluminum hollow-ware, brass fittings and certain electrical goods.<sup>12</sup>

The following is the summation by the British Committee of the evidence adduced by dealers appearing before that Committee. This Association asks your Committee to consider the following summary of dealers' evidence as it came to the British Committee in the light of the special position of the retail hardware merchant in the community, which we have already outlined. Your Committee will note that the special problems faced by the retail merchant, emphasized as they are by the problems of delivery of hardware items to customers in sparsely settled sections of a country such as Canada, were carefully considered by the British Committee. The dealers evidence before the British Committee was summed up by the Committee as follows:<sup>13</sup>

<sup>10</sup> Report of British Committee at page 10.

<sup>11</sup> Report of British Committee at page 17.

<sup>12</sup> Report of British Committee at page 69.

<sup>13</sup> Report of British Committee at page 7.

*Evidence Of Dealers*

36. The early history of resale price maintenance in this country is one of distributors' attempts to organize themselves in such a way as to bring collective pressure on manufacturers of branded lines to fix and enforce retail prices for their goods. The bulk of the evidence which we have received from distributors has been presented to us by associations representing independent traders and it is clear that, at the retail end, the organized pressure for the prescription of minimum prices comes in the main from the specialist shopkeepers. These shopkeepers, many of whom take a very considerable pride in the service which they perform for the public, strongly support the principle of retail distribution by specialists. They argue that only the retailer who is an expert is in a position to offer his customers the full range of articles some of them very slow-selling, within the particular field in which he has chosen to specialize and to give them the benefit of his experience in the form of skilled advice or technical service. They believe also that these facilities cannot be maintained in conditions of acute price competition, in which they claim that it is not always the most useful who survive. These traders have long and bitter memories of cut price wars which, they say, put out of business firms which were of real value to the community but whose value was not recognized by the customer until it was too late.

The British Committee gave careful consideration to the evidence of manufacturers of specialty goods, particularly those which have a relatively long life and whose production involves a high degree of technical skill. The evidence of manufacturers as presented to the British Committee with respect to this type of manufactured item was summarized by the British Committee as follows:<sup>14</sup>

*Evidence of Manufacturers*

45. In the second place, there is a class of article to which, because of its nature, manufacturers have a strong incentive to apply prescribed minimum prices. These articles, which may for convenience be called "technical" products, include motor cars, refrigerators, vacuum cleaners and other goods which have a relatively long life and whose production involves a relatively high degree of technical skill. These goods depend for their successful performance upon technical advice and selection at the time of sale, on skilled maintenance after sale and on the availability of the proper parts for replacement. Manufacturers of technical products rely for their continued sales on the goodwill generated in their customers by a successful performance over a period of years and are anxious to ensure that only properly equipped distributors handle their goods. The costs of such skilled distributors, many of whom give a certain amount of free after-sales service, are of necessity relatively high and they would find it difficult to compete on the basis of selling price alone. Some manufacturers, therefore, appoint as agents a limited number of distributors who must conform to specified standards, and give these agents exclusive sales rights, within particular areas. Others attempt by less direct means to assure their distributors of a reasonably stable and profitable trade and prescribe and strictly enforce minimum prices and margins. In these trades the lowest cost distributor is not necessarily the most efficient and manufacturers seem to be convinced that neither they nor the public derive any real advantage from price competition among distributors.

<sup>14</sup> Report of British Committee at page 9.



Having considered many lines of merchandise in relation to the problems of distribution, and in particular retail sales, including among others the hardware trade, the British Committee came to the final conclusion that resale price maintenance as a vertical arrangement or contract between manufacturer wholesaler and dealer was not against the public interest and accordingly recommended that the Government of the United Kingdom take no action by way of legislation to curb this marketing procedure.

The conclusion of the British Committee and their recommendations are we suggest, the strongest evidence that on an exhaustive examination of this problem in a country whose laws conform so closely to the laws of Canada, no case could be made out for interfering with the Common Law right of manufacturers by contract to stipulate the retail prices at which their branded goods should be sold. Their conclusions and recommendations were in the following terms: <sup>15</sup>

162. We take the view that the manufacturer of a branded article remains responsible for the quality of the goods sold under his own brand; he cannot, therefore, be indifferent to the terms on which his goods are sold to the public. Our evidence has shown that well-known branded articles are particularly liable to be used as loss-leaders by distributors and we are satisfied that their use in this way has not brought any permanent advantage to manufacturers, distributors or the shopping public as a whole. Resale price maintenance offers a convenient means of protecting brands against misuse by distributors in this or other ways.

163. We recommend that no action should be taken which would deprive an individual producer of the power to prescribe and enforce resale prices for goods bearing his brand.

*Has resale price maintenance any tendencies  
adverse to the public interest?*

Up to this point we have directed the attention of your Committee to the importance and value of resale price maintenance in the retail hardware trade along more or less positive lines. It must be admitted, however, that the well established marketing practice of resale price maintenance has opponents who allege that the practice adversely affects the public interest. The studies of the subject which have been made in the past do not reveal any substantial body of opinion opposing resale price maintenance from among to ranks of manufacturers wholesalers, retailers or, as has been shown from the evidence adduced before the British Commission, even from representative consumer organizations. It is clear that opposition to the marketing practice of resale price maintenance comes almost entirely, either directly or indirectly, from sources close to the federal administration in the United States whose ideas have been coloured for two generations by the political appeal of the Sherman Anti-Trust Act of 1890 and its associated statutes. This Act marked the turning away of American Law from the Common Law which established and still preserves in Canada the right of individuals engaged in business to enter into a contract with another individual for the purpose of lawfully preserving property rights, in this instance, the rights relate to the proprietary rights to a brand name, trademark or trade name. Subsequent thinking in the United States has lead to a way of thinking that lurking behind every discussion as to the price at which merchandise should be sold is a "trust" or a combination in restraint of trade. It is to be regretted that the MacQuarrie Committee appeared to fall, in some measure, into this line of thinking when it stated <sup>(16)</sup> "Resale price maintenance

<sup>15</sup> Report of British Committee at page 33.

<sup>16</sup> at page 17.



facilitates and makes more effective horizontal agreements (open or tacit) among the manufacturers". It is our submission that a fair judicial view of the matter would be that conduct which is in fact a horizontal agreement in restraint of trade should, of course, be dealt with under the provisions of the Combines Act if the public interest is adversely affected. If the existing provisions of the Combines Act are not adequate to provide ways and means of preventing less formal types of combinations in restraint of trade, then let the legislation be appropriately amended for this purpose, but do not let any veiled suggestion that vertical arrangements for resale price maintenance may somehow provide a breeding ground for illegal horizontal agreements in restraint of trade and that because of this fact alone vertical agreements for resale price maintenance are contrary to the public interest. We urge your Committee to give the most serious consideration to this phase of the problem and in the hope that we may render every possible assistance to your Committee we propose to refer to certain so-called adverse effects of resale price maintenance in the light of documentary material which we have been able to obtain. It is our hope that in submitting the limited amount of documentary material which is feasible in this memorandum, the occasion may be afforded your Committee for an exhaustive examination of statistical information to be entered on so that your Committee will be acting on the broadest base of factual information rather than on the flimsy grounding of the opinion only.

*Resale price maintenance does not mean high prices*

The MacQuarrie Report stated,<sup>17</sup> "The general level of prices is higher with resale price maintenance than it would be if competition existed". We submit with great respect to the personnel of the MacQuarrie Committee that this statement cannot be justified by existing statistical material and furthermore, that it would not have been a reasonable conclusion from the material referred to in the previous pages of the Report had the Committee quoted the sixth and final finding of the Federal Trade Commission which was as follows:<sup>18</sup>

6. The manufacturers of the price-maintained brands of drugstore items covered in this study generally named minimum prices that were within the range of prices actually charged by their large-volume customers just prior to the time they placed their trade-marked products under minimum resale price contracts.

Oxenfeldt comments as follows:<sup>19</sup>

If resale price maintenance resulted in a substantial and prolonged change in distributors' margins, it would almost certainly have a parallel effect on prices to the consumer. As already indicated manufacturers tended to set the minimum retail price on their product close to the price at which many mass distributors had been selling it and therefore below the prices charged by the independents. Retailers' margins—even including those of the average independent—did not decline, however. Manufacturers tended to lower price to the retailer when they priced their products under resale price maintenance. The Federal Trade Commission concluded:

...reductions made by some druggist in prices of some price-maintained commodities in 1939 were in reality reductions in manufacturer's prices of such magnitude that retailers, after reducing prices, were realizing as large or in some cases, even larger margins than were realized previously when the items were sold at higher retail prices.

<sup>17</sup> at page 19.

<sup>18</sup> A. R. Oxenfeldt, *Industrial Pricing and Market Practice*, New York, 1951, at page 427.

<sup>19</sup> at page 428.

Furthermore, the British Committee inquired extensively into the comparative mark-up on price maintained items as against items which were not subject to price maintenance. The following conclusions of the British Committee on retail mark-up are, we believe of great interest and value:<sup>20</sup>

On the whole the margins allowed on price-maintained goods appear to be lower than those taken on free-price goods. The circumstances vary, however, from product to product and from trade to trade. We do not attach any great significance to the fact that margins on branded and price-maintained goods—especially on well-known lines are generally lower. Indeed we should have been disturbed had this not been the case, for such goods do not ordinarily require *inter alia* the same sales effort as unbranded goods. There is therefore no comparison between the two classes of trade.

Our Association felt that your Committee would profit from actual experience in the hardware trade and we, therefore, entered upon an examination of the actual price pattern on a group of well-known items carried in hardware stores across the nation with a view to determining the relationship of the price trend in leading items to the retail commodity price trend generally and to the cost of living trend. These are Canadian figures from the actual experience of our industry. We emphasize that for the purpose of preparing these submissions time would only permit of a survey of a very limited number of items. In consultations with experienced hardware dealers who are members and executive officers of this Association an arbitrary list of items was prepared for the purposes of this study. This list was chosen as being representative of well-known items, in most cases, fast moving items, but, in some instances, items moving on a much more conservative scale. All the items which were thus arbitrarily chosen for study have been included in the table of figures which we now present and we should hasten to assure your Committee that should your Committee desire to pursue the study of this matter further, this Association will render every possible assistance as it is the belief of experienced members of the retail hardware trade that the price trend in price maintained items has been conservative in relation to the price trend of the national commodity index and in relation to the cost of living index.

The following table shows the price rise in terms of percentage during the period 1939 to 1951 and it is to be noted that in the case of the items with respect to which price maintenance exists, the price rise has been notably less than has been the price rise of items which are not subject to resale price maintenance. These tables also show the price rise for the national commodity index and the rise in the cost of living index figures both of which cover the same period with the exception that it was not possible for us to get an average 1935 to 1939 figure as the base point and we have accordingly taken the 1939 figure as the base point on this table.

TABLE No. 1

*Price trend and retail mark-up in hardware items showing price maintained items and items not subject to price maintenance and showing the national commodity price and cost of living index rise for the corresponding period.*

(Prices shown are price maintained retail or retail normal in the trade where items not price maintained. Adjustment made covering increase in sales tax where sales tax applicable).

<sup>20</sup> Footnote to British Report on page 14.

	1939	1951	% increase	Retail mark-up in % of retail price
<i>Paint (Gallon outside white)</i>				
<i>Price Maintained</i>				
Imperial Varnish "Floglaze"	4.35	7.40	70.1	21.6
Lowe Bros. ....	4.45	7.45	62.9	21.4
Canadian Industries				
Limited "CIL" .....	4.20	7.45	77.4	22.1
<i>Not price maintained</i>				
Scarfe's .....	4.00	7.35	83.7	22.4
Average 1951 price				
<i>Flashlight batteries (each)</i>				
<i>Price maintained</i>				
National Carbon No. 2				
"Eveready" .....	.15	.196	30.7	31.2
<i>Floor waxes (1 pound paste)</i>				
<i>Price maintained</i>				
Edward Hawes "Hawes"...	.45	.5194	15.4	17.0
Boyle Midway				
"Old English" .....	.49	.6075	24.0	25.8
<i>Electric light bulbs (60 watt. bulb)</i>				
<i>Price maintained</i>				
Canadian General Electric.	.20	.196	—2	25.0
<i>Aluminum cooking utensils</i>				
<i>Price maintained</i>				
Aluminum Goods Mfg.				
"Wear Ever"				
(#141 double boiler) ....	2.15	3.88	80.4	33.4
Supreme Aluminum				
"Standard"				
(#402 double boiler) ....	1.55	2.70	74.2	33.5
<i>Not price maintained</i>				
General Steel Wares				
"Triumph"				
(#53 double boiler) .....	1.45	2.99	106.2	33.1
<i>Hand tools</i>				
<i>Not price maintained</i>				
Nail hammer 51½ Stanley				
16 oz. bell faced .....	1.50	3.19	112.17	33.2
Hand saw Disston D-8				
26"-8 point .....	4.00	7.01	75.3	33.6
Brick trowel Rose				
#110 Philadelphia pattern	2.90	5.35	84.4	33.6
Level #1294 Stanley				
24" carpenter .....	.70	1.82	158.8	33.5
Carpenters planes				
Stanley #4 smooth .....	4.75	10.10	112.6	33.3
Stanley #78 rabbet .....	3.75	7.99	113.1	32.2

*National price trends (D.B.S.)*

	1939	1951 (Sept.)	% increase
All commodity prices .....	100	221.6	121.6
Food .....	100	251.1	151.1
Clothing .....	100	206.9	106.9
Home furnishings .....	100	199.1	99.1
Cost of living index .....	100	189.8	89.8



*Resale price maintenance is not an undesirable restriction on competition*

Ample authority can be found in the current economic literature that resale price maintenance retains that "social control of prices" which the McQuarrie Report considers to be of great public importance.<sup>21</sup> It is not the complete picture to declare that price maintenance merely transfers competition from price to service. We have already indicated the small percentage of hardware items which are subject to price maintenance. The experience of our members throughout Canada is that there are numberless instances of price maintained items selling in direct competition with items of comparable quality which are not subject to price maintenance. The true position is that the only element of competition which is eliminated by price maintenance is the competition which the retailer suffers against his own inventory of a given brand of goods which occurs when a competitor cuts prices on that particular brand as a "loss leader." In that situation, a retailer having an investment in branded goods on his shelves finds competition from his own goods which represent an investment on his shelves at a cost often higher than the loss leader price offered by his competitor. We suggest that no responsible person in the public service would be rash enough to say that this type of competition is beneficial to the public on a national basis or that a legal instrument for eliminating this type of competition by loss leading is contrary to the public interest. In fact, as we have shown, the British Committee has categorically gone on record that this type of ruthless competition is in fact against the public interest. It follows that a legal contract which prevents this ruthless competition is in itself in the public interest.

From many authoritative observations of competent economists, we take only one in this memorandum to illustrate the extent and pace of the competition which would remain even if a very large percentage of retail items were subject to resale price maintenance:<sup>22</sup>

Extent of Resale Price Maintenance Under the Laws-Contracts of this nature have been used to a considerable extent in the drug liquor and specialty fields although their use in the packaged food field is relatively rare. The fixing of minimum resale prices by the manufacturer protects wholesale and retail margins so that there is likely to be distributor support for his particular brand. Fixing the minimum price, however, makes it possible for uncontrolled competitive products to be sold at lower prices. If all national brands were placed under minimum price contracts, the private brands of chains, mail-order houses, and other large retailers would furnish the price competition which is necessary to protect the public.

Effect of Fair Trade Laws—When Fair Trade contracts were first used, the immediate effect was to increase the price of controlled merchandise in the cut-price stores and to decrease prices in the neighborhood independent stores, because this latter group was then able to meet competition at minimum contract prices. Later, the price retailers tended to push their private brands with greater success than previously. This opportunity to push private brands was rapidly seized by key retailers. The result has been that a real price competition has existed between brands so that no manufacturer can ignore the competitive price situation in utilizing minimum price contracts.

<sup>21</sup> MacQuarrie Report at page 7.

<sup>22</sup> P. H. Nystrom, Marketing Handbook at page 590.

*Resale price maintenance does not establish a private system of law*

Reference is made in the McQuarrie Report to the fear that resale price maintenance might tend to establish a private system of law allowing no appeal to the Courts of Justice.<sup>23</sup>

It is submitted that this fear is illusory. A resale price maintenance agreement is no more a "private law" than any other valid contract existing between two citizens of Canada. It is elementary that when two persons enter into a contract, they become bound by the "private law" of the particular contract which (while not being for an illegal object) may well represent a variation from the Common Law relating to such a situation. In fact, that is the purpose of a contract. It is equally elementary that when any disagreement arises as to the interpretation of such a contract or as to the rights of either of the parties thereto, the parties have access to the courts for appropriate relief. This is as old as the Common Law. Its application to resale price maintenance agreements is as new as the decision of the Honourable Judge Marier in the Superior Court of the Province of Quebec for the District of Montreal, decided the 14th day of November 1951, in the action brought by Charles Duquette and Jean Duquette against Charles E. Frosst & Company. This decision has received attention in the daily press within the past week. In this case a firm of druggists claimed to have been damaged by certain provisions in a resale price maintenance agreement. An injunction was sought, which was tantamount to an order of mandamus requiring the defendant, a pharmaceutical manufacturing firm, to continue making deliveries of its products notwithstanding breaches in the resale price maintenance agreement by the plaintiff. The decision of the court was that an injunction should not be granted and emphasis was made that the contract was one to be interpreted by the court in accordance with the law applicable to contracts. Nothing could be clearer than that all resale price maintenance agreements, like all other contracts, are subject to the jurisdiction of the courts of the ten provinces of Canada for the determination of any disputes or matters of interpretation.

*Resale price maintenance does not discourage economic efficiency*

The McQuarrie Committee states that it is the view of that committee that "resale price maintenance may perhaps contribute more to discourage efficiency than to protect small business". (<sup>24</sup>)

It was the feeling of this Association that this passing reference to inefficiency in retail outlets was deserving of careful analysis on a basis of existing statistics. It has been possible to refer to statistics showing the relative operating efficiency of retail hardware stores in both Canada and the United States as against the operating efficiency of chain stores and department stores in the United States. Corresponding figures for independent variety stores in the United States are also shown. In the available studies we have chosen base years as close as possible to the base years in the other related studies.

The following table has been compiled from the sources indicated with respect to the individual types of stores or trades as the case may be.

<sup>23</sup>MacQuarrie Report at pages 18 and 21.

<sup>24</sup>MacQuarrie Report at page 20.

TABLE NO. 2

*Comparative Efficiency in Independent, Chain and Department Stores.*

	Dept. Stores U.S.A. 1949 (25)	Chain Variety Stores U.S.A. 1943 (26)	Hardware Stores U.S.A. 1950 (27)	Hardware Stores Canada 1950 (28)	Independent Variety Stores U.S.A. 1943 (26)
Sales .....	100.0%	100.0 %	100.0%	100.0%	100.0 %
Cost of					
Goods ...	64.8	63.68	71.8	73.9	66.84
Gross Profit	35.2	36.62	28.2	27.1	34.92
Operating					
Expenses	32.5	28.60	23.75	20.9	27.51
Net Profit .	2.7	7.72	4.45	6.2	8.91
Stock	4.4		2.35	3.08	
turn-over	times		times	times	

The foregoing statistics are submitted as conclusive proof that the independent retail hardware dealer needs no protection against inefficiency in his competition for a share of the retail business of Canada with chain stores and department stores. The comparative gross profit figures in Table No. 2 illustrate graphically the weapon of bulk buying power with which the chain and department stores compete against the independent dealer. It is in this field where, as we have stated above, the chain and department stores compete effectively with what are known in the trade as "private brands". Here is competition in its finest flower. Experience has shown, however, that with the horizontal growth of a retail outlet, operating costs increase at an abnormal rate so that when you examine the comparative operating expenses you find that the operating expenses of the independent dealer are very much lower than those of his competitors, the chain stores and the department stores. Where the figures are available from the studies referred to, the volume of stock turn-over annually is shown to illustrate the slow moving character of the stock of the hardware dealer in comparison to the chain and department stores.

*Conclusion*

The Ontario Retail Hardware Association offers the foregoing submissions and factual information in the belief that it presents the strongest evidence that resale price maintenance does not operate against the public interests in that it does not cause high prices, nor does it cause a reduction in efficiency, nor does it establish a private law which excludes the courts, but that on the contrary resale price maintenance, while affecting only a small percentage of the retail hardware business, nevertheless constitutes an accepted economic and legal procedure whereby a valuable part of the business conducted by retail hardware merchants can be conducted on an orderly basis with a continuing profit at a reasonable level, and with assurance to the consumer that there will be a high level of competition between branded items, on many of which price maintenance, exists as against "private brands", or items on which there is no

<sup>25</sup>Source: Harvard University Graduate School of Business Administration, Bureau of Business Research, Bulletin No. 132.

<sup>26</sup>Source: Harvard University, Bulletin No. 120.

<sup>27</sup>National Retail Hardware Association (U.S.A.) Publication, Hardware Retailer, September, 1951, page 141.

<sup>28</sup>Hardware and Metal and Electrical Dealer, March 31, 1951, pp. 38 et seq.



price maintenance, and the further assurance that, particularly in the case of the brand lines, there will be no pressure on the manufacturer for debasement of equality.

As previously stated this Association desires to assure the Committee of its continuing interest in this important problem and of its willingness to render every possible assistance to your Committee in your enquiry into this matter by the furnishing of such further factual information as your Committee might consider helpful.

All of which is respectfully submitted,

by:

ONTARIO RETAIL HARDWARE ASSOCIATION  
NORMAN M. DUNN,

*Counsel Herein.*

Toronto, November 26/51.

## APPENDIX B

## APPENDIX "A"

## TO

THE SUBMISSION OF THE ONTARIO RETAIL HARDWARE ASSOCIATION  
TO THE JOINT COMMITTEE OF THE SENATE AND THE HOUSE OF  
COMMONS ON COMBINES LEGISLATION

December 3, 1951.

In May 1951 the Ontario Retail Hardware Association undertook a survey of typical Ontario towns for the purpose of learning the percentage mark-ups prevailing in communities of various size, and in particular to observe the extent of variations in mark-up, both from community to community and with respect to the mark-up indicated in the Ontario Retail Hardware Association Price Guide, which has, for approximately 30 years been maintained by the Ontario Retail Hardware Association as a source of reference for members. The mark-ups used in the Price Guide have been established by reference to the combined experience of members and directors of the Association as to the mark-ups on particular lines which have been found appropriate to enable retail dealers to carry on business at a normal profit.

This survey was conducted by the Association as a service to its members and the results of the survey were published for the information of members contributing to it, in September 1951.

The survey covered the following seven Ontario Communities:—

Town or City	Population 1951	No. of Hardware Dealers
1. Orillia .....	10,985	4
2. Grimsby .....	2,414	3
3. Niagara Falls .....	21,304	11
4. London .....	94,027	29
5. Windsor .....	118,584	30
6. Welland .....	16,004	6
7. Milton .....	1,964	3

The retail stores which supplied this information are, in our opinion, the leading Hardware Stores of the towns and we believe that the mark-ups shown are representative for that locality.

ONTARIO RETAIL HARDWARE ASSOCIATION.

## SHEET 1

## HOUSEWARES

(RETAIL MARK-UPS EXPRESSED IN PER CENT OF RETAIL PRICE)

Item	Mark-Ups by Towns							Average	O.R.H.A. Price Guide Mark-Up
	Orillia	Niagara	London	Grims- by	Wind- sor	Wel- land	Milton		
Aluminumware.....	33 $\frac{1}{2}$	33 $\frac{1}{2}$	33 $\frac{1}{2}$	33 $\frac{1}{2}$	33 $\frac{1}{2}$	28 $\frac{1}{2}$	33 $\frac{1}{2}$	32 $\frac{1}{2}$	33 $\frac{1}{2}$
Brushes, House.....	33 $\frac{1}{2}$	33 $\frac{1}{2}$	33 $\frac{1}{2}$	33 $\frac{1}{2}$	33 $\frac{1}{2}$	28 $\frac{1}{2}$	35 $\frac{1}{2}$	33	
Candles.....	33 $\frac{1}{2}$		33 $\frac{1}{2}$	33 $\frac{1}{2}$		28 $\frac{1}{2}$		32 $\frac{1}{2}$	
Canners and Supp.....	28 $\frac{1}{2}$	33 $\frac{1}{2}$	33 $\frac{1}{2}$	33 $\frac{1}{2}$	31	28 $\frac{1}{2}$	28 $\frac{1}{2}$	31	
Carpet Sweep.....	37 $\frac{1}{2}$	33 $\frac{1}{2}$	33 $\frac{1}{2}$	33 $\frac{1}{2}$	33 $\frac{1}{2}$	28 $\frac{1}{2}$	33 $\frac{1}{2}$	33 $\frac{1}{2}$	35
Clean. Supp.....	33 $\frac{1}{2}$	33 $\frac{1}{2}$	33 $\frac{1}{2}$	33 $\frac{1}{2}$	33 $\frac{1}{2}$	28 $\frac{1}{2}$	33 $\frac{1}{2}$	32 $\frac{1}{2}$	
Cookers.....	33 $\frac{1}{2}$	33 $\frac{1}{2}$	33 $\frac{1}{2}$	33 $\frac{1}{2}$		28 $\frac{1}{2}$	33 $\frac{1}{2}$	32 $\frac{1}{2}$	33 $\frac{1}{2}$
Cook. Utensils.....	28 $\frac{1}{2}$	33 $\frac{1}{2}$	33 $\frac{1}{2}$	33 $\frac{1}{2}$	31	28 $\frac{1}{2}$	33 $\frac{1}{2}$	31 $\frac{1}{2}$	33 $\frac{1}{2}$
Dairyware.....	28 $\frac{1}{2}$			33 $\frac{1}{2}$		28 $\frac{1}{2}$	28 $\frac{1}{2}$	29 $\frac{1}{2}$	33 $\frac{1}{2}$
Dec. Kitchen W.....	33 $\frac{1}{2}$	33 $\frac{1}{2}$	33 $\frac{1}{2}$	33 $\frac{1}{2}$	31	28 $\frac{1}{2}$	33 $\frac{1}{2}$	32 $\frac{1}{2}$	33 $\frac{1}{2}$
Dinner Sets.....	37 $\frac{1}{2}$			33 $\frac{1}{2}$	37 $\frac{1}{2}$	28 $\frac{1}{2}$		34 $\frac{1}{2}$	
Enamelware.....	28 $\frac{1}{2}$	33 $\frac{1}{2}$	33 $\frac{1}{2}$	33 $\frac{1}{2}$	31	28 $\frac{1}{2}$	33 $\frac{1}{2}$	31 $\frac{1}{2}$	33 $\frac{1}{2}$
Faucets (Wood).....	33 $\frac{1}{2}$	33 $\frac{1}{2}$	33 $\frac{1}{2}$	33 $\frac{1}{2}$	37 $\frac{1}{2}$	28 $\frac{1}{2}$	33 $\frac{1}{2}$	33 $\frac{1}{2}$	33 $\frac{1}{2}$
Galv. Ware.....	28 $\frac{1}{2}$	33 $\frac{1}{2}$	33 $\frac{1}{2}$	33 $\frac{1}{2}$	28 $\frac{1}{2}$	28 $\frac{1}{2}$	25	30	31
Gifts and Nov.....	37 $\frac{1}{2}$		33 $\frac{1}{2}$	33 $\frac{1}{2}$	37 $\frac{1}{2}$	28 $\frac{1}{2}$	35 $\frac{1}{2}$	34 $\frac{1}{2}$	
Glassware.....	33 $\frac{1}{2}$		33 $\frac{1}{2}$	33 $\frac{1}{2}$	37 $\frac{1}{2}$	28 $\frac{1}{2}$	35 $\frac{1}{2}$	30 $\frac{1}{2}$	33 $\frac{1}{2}$
House. Cutlery.....	37 $\frac{1}{2}$		33 $\frac{1}{2}$	33 $\frac{1}{2}$	37 $\frac{1}{2}$	28 $\frac{1}{2}$	37 $\frac{1}{2}$	34 $\frac{1}{2}$	33 $\frac{1}{2}$
Ironing Boards.....	33 $\frac{1}{2}$	33 $\frac{1}{2}$	33 $\frac{1}{2}$	33 $\frac{1}{2}$	31	28 $\frac{1}{2}$	33 $\frac{1}{2}$	32 $\frac{1}{2}$	33 $\frac{1}{2}$
Kitchen Tools.....	33 $\frac{1}{2}$	33 $\frac{1}{2}$	33 $\frac{1}{2}$	33 $\frac{1}{2}$	33 $\frac{1}{2}$	28 $\frac{1}{2}$	33 $\frac{1}{2}$	32 $\frac{1}{2}$	
Ladders (House.).....	33 $\frac{1}{2}$	33 $\frac{1}{2}$	33 $\frac{1}{2}$	33 $\frac{1}{2}$	28 $\frac{1}{2}$	28 $\frac{1}{2}$	31	31 $\frac{1}{2}$	33 $\frac{1}{2}$
Lamps (Kerosene).....	33 $\frac{1}{2}$	33 $\frac{1}{2}$	33 $\frac{1}{2}$	33 $\frac{1}{2}$		28 $\frac{1}{2}$	33 $\frac{1}{2}$	32 $\frac{1}{2}$	30
Laundry Supp.....	33 $\frac{1}{2}$	33 $\frac{1}{2}$	33 $\frac{1}{2}$	33 $\frac{1}{2}$		28 $\frac{1}{2}$	31	32	
Mirrors.....	33 $\frac{1}{2}$	33 $\frac{1}{2}$	33 $\frac{1}{2}$	33 $\frac{1}{2}$	37 $\frac{1}{2}$	28 $\frac{1}{2}$	43	34 $\frac{1}{2}$	
Oilcloth.....						28 $\frac{1}{2}$		28 $\frac{1}{2}$	
Ovenware.....	33 $\frac{1}{2}$		33 $\frac{1}{2}$	33 $\frac{1}{2}$	33 $\frac{1}{2}$	28 $\frac{1}{2}$	33 $\frac{1}{2}$	32 $\frac{1}{2}$	33 $\frac{1}{2}$
Pictures.....						28 $\frac{1}{2}$		28 $\frac{1}{2}$	
Potteryware.....				33 $\frac{1}{2}$	37 $\frac{1}{2}$	33 $\frac{1}{2}$	35 $\frac{1}{2}$	35	33 $\frac{1}{2}$
Roasters.....	28 $\frac{1}{2}$	33 $\frac{1}{2}$	33 $\frac{1}{2}$	33 $\frac{1}{2}$	28 $\frac{1}{2}$	33 $\frac{1}{2}$	33 $\frac{1}{2}$	32	33 $\frac{1}{2}$
Shears and Sciss.....	37 $\frac{1}{2}$	33 $\frac{1}{2}$	33 $\frac{1}{2}$	33 $\frac{1}{2}$	37 $\frac{1}{2}$	33 $\frac{1}{2}$	37 $\frac{1}{2}$	35	33 $\frac{1}{2}$
Silverware and Sun.....				33 $\frac{1}{2}$	37 $\frac{1}{2}$	33 $\frac{1}{2}$	37 $\frac{1}{2}$	35 $\frac{1}{2}$	
Steelware.....	33 $\frac{1}{2}$		33 $\frac{1}{2}$	33 $\frac{1}{2}$		33 $\frac{1}{2}$	33 $\frac{1}{2}$	33 $\frac{1}{2}$	
Stemware.....					39 $\frac{1}{2}$	33 $\frac{1}{2}$		36 $\frac{1}{2}$	
Stoneware.....		33 $\frac{1}{2}$		33 $\frac{1}{2}$		33 $\frac{1}{2}$	35 $\frac{1}{2}$	34	
Tableware.....				33 $\frac{1}{2}$	37 $\frac{1}{2}$	33 $\frac{1}{2}$	35 $\frac{1}{2}$	35	
Tinware.....	28 $\frac{1}{2}$	33 $\frac{1}{2}$	33 $\frac{1}{2}$	33 $\frac{1}{2}$	33 $\frac{1}{2}$	33 $\frac{1}{2}$	33 $\frac{1}{2}$	32 $\frac{1}{2}$	33 $\frac{1}{2}$
Toilet Tissue.....	28 $\frac{1}{2}$	20	28 $\frac{1}{2}$	33 $\frac{1}{2}$	28 $\frac{1}{2}$	33 $\frac{1}{2}$	20	27 $\frac{1}{2}$	
Wax Paper.....						33 $\frac{1}{2}$	33 $\frac{1}{2}$	33 $\frac{1}{2}$	
Window Shades and Sundries.....				33 $\frac{1}{2}$	37 $\frac{1}{2}$	33 $\frac{1}{2}$		34 $\frac{1}{2}$	



## SHEET 2

## ELECTRICAL (INCLUDING LIGHT FIXTURES AND SMALL APPLIANCES)

(RETAIL MARK-UPS EXPRESSED IN PER CENT OF RETAIL PRICES)

Item	Mark-Ups by Towns							Average	O.R.H.A. Price Guide Mark-Up
	Orillia	Niagara	London	Grim- by	Wind- sor	Wel- land	Milton		
Coffee Brewers.....	33 $\frac{1}{3}$		33 $\frac{1}{3}$	33 $\frac{1}{3}$	33 $\frac{1}{3}$	28 $\frac{1}{2}$	33 $\frac{1}{3}$	32 $\frac{1}{2}$	33 $\frac{1}{3}$
Corn Popper.....	33 $\frac{1}{3}$	33 $\frac{1}{3}$	33 $\frac{1}{3}$	33 $\frac{1}{3}$	33 $\frac{1}{3}$	28 $\frac{1}{2}$		32 $\frac{1}{2}$	
Cords and Sets.....	33 $\frac{1}{3}$	33 $\frac{1}{3}$	33 $\frac{1}{3}$	33 $\frac{1}{3}$	33 $\frac{1}{3}$	28 $\frac{1}{2}$	33 $\frac{1}{3}$	32 $\frac{1}{2}$	33 $\frac{1}{3}$
Curling Irons.....	33 $\frac{1}{3}$			33 $\frac{1}{3}$	33 $\frac{1}{3}$	28 $\frac{1}{2}$	33 $\frac{1}{3}$	32 $\frac{1}{2}$	33 $\frac{1}{3}$
Door Bells.....	33 $\frac{1}{3}$	33 $\frac{1}{3}$	33 $\frac{1}{3}$	33 $\frac{1}{3}$	33 $\frac{1}{3}$	28 $\frac{1}{2}$	33 $\frac{1}{3}$	32 $\frac{1}{2}$	
Dry Batteries.....		33 $\frac{1}{3}$	33 $\frac{1}{3}$	33 $\frac{1}{3}$	33 $\frac{1}{3}$	28 $\frac{1}{2}$	33 $\frac{1}{3}$	32 $\frac{1}{2}$	27
Elec. Blankets.....	33 $\frac{1}{3}$	33 $\frac{1}{3}$		33 $\frac{1}{3}$	33 $\frac{1}{3}$	28 $\frac{1}{2}$	33 $\frac{1}{3}$	32 $\frac{1}{2}$	33 $\frac{1}{3}$
Elec. Drills.....	33 $\frac{1}{3}$	28 $\frac{1}{2}$		28 $\frac{1}{2}$	33 $\frac{1}{3}$	28 $\frac{1}{2}$	28 $\frac{1}{2}$	30	30
Elec. Grinders.....	33 $\frac{1}{3}$	28 $\frac{1}{2}$		20	33 $\frac{1}{3}$	28 $\frac{1}{2}$	28 $\frac{1}{2}$	28 $\frac{1}{2}$	30
Elec. Heaters.....	33 $\frac{1}{3}$	33 $\frac{1}{3}$	33 $\frac{1}{3}$	33 $\frac{1}{3}$	33 $\frac{1}{3}$	28 $\frac{1}{2}$	33 $\frac{1}{3}$	32 $\frac{1}{2}$	33 $\frac{1}{3}$
Elec. Irons.....	33 $\frac{1}{3}$	33 $\frac{1}{3}$	33 $\frac{1}{3}$	33 $\frac{1}{3}$	33 $\frac{1}{3}$	28 $\frac{1}{2}$	33 $\frac{1}{3}$	32 $\frac{1}{2}$	33 $\frac{1}{3}$
Elec. Mixers.....	33 $\frac{1}{3}$	33 $\frac{1}{3}$		33 $\frac{1}{3}$	33 $\frac{1}{3}$	28 $\frac{1}{2}$	33 $\frac{1}{3}$	32 $\frac{1}{2}$	33 $\frac{1}{3}$
Elec. Roasters.....	33 $\frac{1}{3}$				33 $\frac{1}{3}$	28 $\frac{1}{2}$	33 $\frac{1}{3}$	32 $\frac{1}{2}$	33 $\frac{1}{3}$
Elec. Sundries.....	33 $\frac{1}{3}$			33 $\frac{1}{3}$	33 $\frac{1}{3}$	28 $\frac{1}{2}$	33 $\frac{1}{3}$	32 $\frac{1}{2}$	33 $\frac{1}{3}$
Fans.....	33 $\frac{1}{3}$	33 $\frac{1}{3}$	33 $\frac{1}{3}$	33 $\frac{1}{3}$	33 $\frac{1}{3}$	28 $\frac{1}{2}$	33 $\frac{1}{3}$	32 $\frac{1}{2}$	33 $\frac{1}{3}$
Fence Control.....				33 $\frac{1}{3}$		28 $\frac{1}{2}$	33 $\frac{1}{3}$	31 $\frac{1}{4}$	30
Health Lamps.....	33 $\frac{1}{3}$	33 $\frac{1}{3}$				28 $\frac{1}{2}$	33 $\frac{1}{3}$	32 $\frac{1}{2}$	
Heating Pads.....	33 $\frac{1}{3}$	33 $\frac{1}{3}$		33 $\frac{1}{3}$	33 $\frac{1}{3}$	28 $\frac{1}{2}$	33 $\frac{1}{3}$	32 $\frac{1}{2}$	33 $\frac{1}{3}$
Hot Plates.....	33 $\frac{1}{3}$	33 $\frac{1}{3}$	33 $\frac{1}{3}$	33 $\frac{1}{3}$		28 $\frac{1}{2}$	33 $\frac{1}{3}$	32 $\frac{1}{2}$	32
Lamps (floor).....						28 $\frac{1}{2}$		28 $\frac{1}{2}$	
Light Bulbs.....	28 $\frac{1}{2}$	28 $\frac{1}{2}$	28 $\frac{1}{2}$	25		28 $\frac{1}{2}$	28 $\frac{1}{2}$	28	27 $\frac{1}{4}$
Light Fixtures.....				33 $\frac{1}{3}$	37 $\frac{1}{2}$	28 $\frac{1}{2}$	43	35 $\frac{1}{2}$	
Motors.....	25			20	25	28 $\frac{1}{2}$		24 $\frac{3}{4}$	
Radio Equip.....				33 $\frac{1}{3}$		28 $\frac{1}{2}$		31	
Solder. Irons.....	33 $\frac{1}{3}$	33 $\frac{1}{3}$	33 $\frac{1}{3}$	33 $\frac{1}{3}$	33 $\frac{1}{3}$	28 $\frac{1}{2}$	33 $\frac{1}{3}$	32 $\frac{1}{2}$	33 $\frac{1}{3}$
Toasters.....	33 $\frac{1}{3}$	33 $\frac{1}{3}$	33 $\frac{1}{3}$	33 $\frac{1}{3}$	33 $\frac{1}{3}$	28 $\frac{1}{2}$	33 $\frac{1}{3}$	32 $\frac{1}{2}$	33 $\frac{1}{3}$
Waffle Irons.....	33 $\frac{1}{3}$	33 $\frac{1}{3}$		33 $\frac{1}{3}$	33 $\frac{1}{3}$	28 $\frac{1}{2}$	33 $\frac{1}{3}$	32 $\frac{1}{2}$	33 $\frac{1}{3}$
Welding Outfit.....						28 $\frac{1}{2}$		28 $\frac{1}{2}$	
Wiring Access.....	33 $\frac{1}{3}$	33 $\frac{1}{3}$	33 $\frac{1}{3}$	33 $\frac{1}{3}$	37 $\frac{1}{2}$	28 $\frac{1}{2}$	42	34 $\frac{1}{2}$	33 $\frac{1}{3}$
Flashlights.....	33 $\frac{1}{3}$	33 $\frac{1}{3}$	33 $\frac{1}{3}$	33 $\frac{1}{3}$		28 $\frac{1}{2}$	33 $\frac{1}{3}$	32 $\frac{1}{2}$	29

## SHEET 3

## SPORTING GOODS

(RETAIL MARK-UPS EXPRESSED IN PERCENT OF RETAIL PRICE)

Item	Mark-Ups by Towns							Average	O.R.H.A. Price Guide Mark-Up
	Orillia	Niagara	London	Grims- by	Wind- sor	Wel- land	Milton		
Ammunition.....	25	23	28½	23	25	25	23	24½	22½
Archery.....						25		25	
Athletic Goods.....	33½			33½	33½	25	33½	31½	33½
Barber Supplies.....	35½			33½	37½	25		32½	
Base Ball.....	33½	33½		33½	33½	25	33½	32	
Basket Ball.....					33½	25	33½	30½	
Bicycles and Repairs.....						25	33½	29½	
Boxing Gloves.....						25	33½	29½	
Camp Cots.....						25		25	
Camp Stoves.....		30	33½	33½	33½	25	30	31	33½
Clocks.....		31	33½	33½		25	31	30½	25
Croquet.....	33½	33½		33½		25	33½	31½	
Dog Harness.....		33½		33½		25	33½	31½	
Fishing Tackle.....	33½	33½	33½	33½	37½	25	35½	33	
Foot Ball.....						25	33½	29½	
Golf and Sundries.....						25	33½	29½	
Guns.....	25	25½			28½	25	25	25½	25
Hammocks.....						25		25	
Hunting Clothing.....						25		25	
Hunting Knives.....	33½	33½	33½	33½		25	35½	32½	
Jugs and Bottles.....	33½	33½	33½	33½		25	33½	32	33½
Lanterns (Gas).....		30	33½	33½	33½	25	30	31	33½
Lawn Furniture.....						25		25	
Leather Items.....						25		25	
Luggage.....						25		25	
Oil (Gun).....				33½		25	33½	30½	33½
Outboard Motors.....				25		25	25	25	
Pistols.....						25		25	
Pocket Knives.....	33½	33½	33½	33½	37½	25	37½	33½	
Rifles.....	25	25½		25	28½	25	28½	26½	25
Roller Skates.....	33½	33½	33½	33½		25	33½	32	
Shot Guns.....	25	25½		25	28½	25	28½	26½	25
Skates.....	33½	33½				25	33½	31½	
Skiis.....	33½			33½		25	33½	31½	
Sleds and Toboggans.....	33½	33½	33½	33½	28½	25	33½	31½	
Striking Bags.....						25		25	
Tennis.....				33½		25	33½	30½	
Tents.....						25	25	25	
Traps (Animal).....		33½		33½		25	25	29½	33½
Trap Shooting.....						25		25	
Velocipedes.....		31	33½	33½	33½	25	31	31½	
Wagons.....	33½	31	33½	33½	31	25	33½	31½	
Watches.....		28½		33½		25	28½	29	15

## SHEET 4

## BUILDERS HARDWARE AND SUPPLIES

(RETAIL MARK-UPS EXPRESSED IN PERCENT OF RETAIL PRICE)

Item	Mark-Ups by Towns							Average	O.R.H.A. Price Guide Mark-Up
	Orillia	Niagara	London	Grims- by	Windsor	Weland	Milton		
Garage Door Hdwe....	28½			33½	28½	28½	33½	30½	27
Brads.....				33½	28½	28½	37½	32	33½
Cabinet Hardware.....				33½	28½	28½	33½	31	33½
Castors.....	33½	33½		33½	28½	28½	33½	31½	
Cloth (Hdwe.).....	33½	33½		33½	28½	28½	33½	31	35
Comb. Door Hdwe.....	25	20		35½	28½	28½	25	26½	33½
Door Hardware.....				33½	28½	28½	33½	31	33½
Eavestrough and Fitt.....					28½	28½	33½	30	33½
Glass Substitute.....	33½	33½		33½	28½	28½	10½	28	
Glass and Sundries.....		50		50			50	50	50
Galvanized Sheet.....	33½	33½		33½	28½	28½	10½	28	33½
Hooks and Eyes.....	33½	33½	33½	33½	28½	28½	33½	32	33½
Insulation.....					33½	28½	33½	31½	
Mail Boxes.....	33½	33½	33½		33½	28½		32½	
Padlocks.....	37½	33½	33½	33½	33½	28½	33½	33½	33½
Ridge and Valley Iron.....					33½	28½	33½	31½	33½
Roof Coating.....	33½	33½	33½	33½	33½	28½	33½	32½	14½
Roofing.....	28½	20	28½	20	33½	28½	16½	25	15
Sash Hardware.....	33½	33½	33½	33½	33½	28½	33½	32½	33½
Screen Door Hdwe.....	33½	33½	33½	33½	33½	28½	33½	32½	33½
Screws.....	33½	33½	33½		33½	28½	33½	32½	40
Shelf Hardware.....	33½	33½	33½	33½	33½	28½	33½	32½	33½
Tacks.....	33½	33½	33½	33½	33½	28½	33½	32½	40
Weatherstrip.....	33½	33½	33½	33½	33½	28½	33½	32½	33½

## SHEET 5

## TOOLS AND HARDWARE

Abrasives.....	33½	33½	33½	33½	31	28½	43	33½	33½
Axes.....	33½	33½	33½	33½	33½	28½	33½	32½	33½
Belting Supp.....		31½		33½		28½	33½	32½	33½
Bits.....	33½	33½	33½	33½	33½	28½	33½	32½	33½
Bolts.....	33½	33½	33½	33½	37½	28½	33½	33½	40
Braces.....	31	33½	33½	33½	33½	28½	33½	32½	33½
Brushes (Horse).....	33½	33½		33½		28½	33½	32½	
Cap Screws.....	33½	33½	33½	33½	37½	28½	33½	33½	40
Chains and Rep.....	33½			33½		28½	33½	32½	33½
Chisels.....	33½		33½	33½	33½	28½	33½	32½	33½
Clamps.....	33½	33½	33½	33½		28½	33½	32½	33½
Cleavices.....	33½		33½	33½	33½	28½	33½	32½	33½
Cold Chisels.....	33½	33½	33½	33½	33½	28½	33½	33½	33½
Collars.....				33½		28½		31	
Combs (Curry).....	33½	33½		33½		28½	33½	32½	
Drills Hand.....	31	33½	33½	33½	33½	28½	33½	32½	33½
Engines (Gas).....						28½		28½	
Fencing Acc.....		33½				28½	33½	31½	33½
Fertilizer.....	33½	28	33½	28½	25	28½	28	29½	33½
Files.....	33½	33½	33½	33½	33½	28½	33½	32½	33½
Forks.....	28½	33½	33½	33½		28½	33½	31½	33½
Founts Etc.....				33½		28½	33½	31½	
Garden Hose.....	33½	33½	28½	33½	28½	28½	27½	30½	33½
Garden Tools.....	28½	33½	33½	28½	31	28½	33½	31	33½
Grease Cups.....	33½	33½		33½		28½	33½	32½	25
Grinders.....	33½	33½	33½	33½	33½	28½		32½	33½
Halters.....				33½		28½		31	
Hammers.....	33½	33½	33½	33½	33½	28½	33½	32½	33½



## SHEET 5

## TOOLS AND HARDWARE

(RTAIL MARK-UPS EXPRESSED IN PERCENT OF RETAIL PRICE)

Item	Mark-Ups by Towns							Average	O.R.H.A. Price Guide Mark-Up
	Orillia	Niagara	London	Grims- by	Wind- sor	Wel- land	Milton		
Harness Hdwe.				33 $\frac{1}{2}$		28 $\frac{1}{2}$	33 $\frac{1}{2}$	31 $\frac{1}{2}$	
Hay Carriers.						28 $\frac{1}{2}$		28 $\frac{1}{2}$	
Horse Shoes.				33 $\frac{1}{2}$		28 $\frac{1}{2}$		31	33 $\frac{1}{2}$
Insecticides.	31	26			33 $\frac{1}{2}$	28 $\frac{1}{2}$	33 $\frac{1}{2}$	31	20
Lanterns Kero.		33 $\frac{1}{2}$	33 $\frac{1}{2}$	33 $\frac{1}{2}$		28 $\frac{1}{2}$	33 $\frac{1}{2}$	32 $\frac{1}{2}$	33 $\frac{1}{2}$
Lawn Mowers.	33 $\frac{1}{2}$	28 $\frac{1}{2}$	28 $\frac{1}{2}$	28 $\frac{1}{2}$	23 $\frac{1}{2}$	28 $\frac{1}{2}$	28 $\frac{1}{2}$	29 $\frac{1}{2}$	25
Levels.	33 $\frac{1}{2}$	33 $\frac{1}{2}$	33 $\frac{1}{2}$	33 $\frac{1}{2}$		28 $\frac{1}{2}$	33 $\frac{1}{2}$	32 $\frac{1}{2}$	33 $\frac{1}{2}$
Machine Bolts.	35 $\frac{1}{2}$	33 $\frac{1}{2}$	33 $\frac{1}{2}$	33 $\frac{1}{2}$	37 $\frac{1}{2}$	28 $\frac{1}{2}$	33 $\frac{1}{2}$	33 $\frac{1}{2}$	40
Mason Tools.		33 $\frac{1}{2}$	33 $\frac{1}{2}$	33 $\frac{1}{2}$	33 $\frac{1}{2}$	28 $\frac{1}{2}$	33 $\frac{1}{2}$	32 $\frac{1}{2}$	33 $\frac{1}{2}$
Misc. Farm Supp.	33 $\frac{1}{2}$			33 $\frac{1}{2}$		28 $\frac{1}{2}$	33 $\frac{1}{2}$	32 $\frac{1}{2}$	33 $\frac{1}{2}$
Nails.		28 $\frac{1}{2}$	33 $\frac{1}{2}$		28 $\frac{1}{2}$	28 $\frac{1}{2}$	28 $\frac{1}{2}$	30	25
Oil Cans.	28 $\frac{1}{2}$	33 $\frac{1}{2}$	33 $\frac{1}{2}$	33 $\frac{1}{2}$		28 $\frac{1}{2}$	33 $\frac{1}{2}$	31 $\frac{1}{2}$	33 $\frac{1}{2}$
Oilers.	33 $\frac{1}{2}$	33 $\frac{1}{2}$	33 $\frac{1}{2}$	33 $\frac{1}{2}$		28 $\frac{1}{2}$	33 $\frac{1}{2}$	32 $\frac{1}{2}$	33 $\frac{1}{2}$
Planes.	28 $\frac{1}{2}$	33 $\frac{1}{2}$	33 $\frac{1}{2}$	33 $\frac{1}{2}$		28 $\frac{1}{2}$	33 $\frac{1}{2}$	32 $\frac{1}{2}$	33 $\frac{1}{2}$
Pliers and Nipper.	33 $\frac{1}{2}$	33 $\frac{1}{2}$	33 $\frac{1}{2}$	33 $\frac{1}{2}$	33 $\frac{1}{2}$	28 $\frac{1}{2}$	33 $\frac{1}{2}$	32 $\frac{1}{2}$	33 $\frac{1}{2}$
Post Drills.		33 $\frac{1}{2}$		33 $\frac{1}{2}$		28 $\frac{1}{2}$	28 $\frac{1}{2}$	31	33 $\frac{1}{2}$
Poultry Supp.	33 $\frac{1}{2}$					28 $\frac{1}{2}$	33 $\frac{1}{2}$	31 $\frac{1}{2}$	
Power Mowers.	25			23	23	28 $\frac{1}{2}$	23	24 $\frac{1}{2}$	25
Pulleys.	33 $\frac{1}{2}$	33 $\frac{1}{2}$	33 $\frac{1}{2}$	33 $\frac{1}{2}$		28 $\frac{1}{2}$	33 $\frac{1}{2}$	32 $\frac{1}{2}$	33 $\frac{1}{2}$
Rivets and Burrs.	33 $\frac{1}{2}$	33 $\frac{1}{2}$	33 $\frac{1}{2}$	33 $\frac{1}{2}$		33 $\frac{1}{2}$	33 $\frac{1}{2}$	33 $\frac{1}{2}$	33 $\frac{1}{2}$
Rope and Acc.	33 $\frac{1}{2}$	33 $\frac{1}{2}$	33 $\frac{1}{2}$	33 $\frac{1}{2}$			31	33	33 $\frac{1}{2}$
Rules.	33 $\frac{1}{2}$	33 $\frac{1}{2}$	33 $\frac{1}{2}$	33 $\frac{1}{2}$	33 $\frac{1}{2}$	33 $\frac{1}{2}$	33 $\frac{1}{2}$	33 $\frac{1}{2}$	33 $\frac{1}{2}$
Saws.	33 $\frac{1}{2}$	33 $\frac{1}{2}$	33 $\frac{1}{2}$	33 $\frac{1}{2}$	33 $\frac{1}{2}$	33 $\frac{1}{2}$	33 $\frac{1}{2}$	33 $\frac{1}{2}$	33 $\frac{1}{2}$
Saw Tools.	33 $\frac{1}{2}$	33 $\frac{1}{2}$	33 $\frac{1}{2}$	33 $\frac{1}{2}$		33 $\frac{1}{2}$	33 $\frac{1}{2}$	33 $\frac{1}{2}$	33 $\frac{1}{2}$
Scoops.		33 $\frac{1}{2}$	33 $\frac{1}{2}$	33 $\frac{1}{2}$		33 $\frac{1}{2}$	33 $\frac{1}{2}$	33 $\frac{1}{2}$	33 $\frac{1}{2}$
Scrapers.			33 $\frac{1}{2}$	33 $\frac{1}{2}$		33 $\frac{1}{2}$	33 $\frac{1}{2}$	33 $\frac{1}{2}$	33 $\frac{1}{2}$
Screen Wire.	33 $\frac{1}{2}$	33 $\frac{1}{2}$	33 $\frac{1}{2}$	28 $\frac{1}{2}$	37 $\frac{1}{2}$	33 $\frac{1}{2}$	33 $\frac{1}{2}$	33 $\frac{1}{2}$	33 $\frac{1}{2}$
Screw Driver.	33 $\frac{1}{2}$	33 $\frac{1}{2}$	33 $\frac{1}{2}$	33 $\frac{1}{2}$		33 $\frac{1}{2}$	33 $\frac{1}{2}$	33 $\frac{1}{2}$	33 $\frac{1}{2}$
Screw Plates.				33 $\frac{1}{2}$		33 $\frac{1}{2}$	33 $\frac{1}{2}$	33 $\frac{1}{2}$	33 $\frac{1}{2}$
Sharp. Stones.	31	33 $\frac{1}{2}$	33 $\frac{1}{2}$	33 $\frac{1}{2}$	33 $\frac{1}{2}$	33 $\frac{1}{2}$	35 $\frac{1}{2}$	34	33 $\frac{1}{2}$
Shoe Findings.				33 $\frac{1}{2}$		33 $\frac{1}{2}$	33 $\frac{1}{2}$	33 $\frac{1}{2}$	33 $\frac{1}{2}$
Shovels.	28 $\frac{1}{2}$	33 $\frac{1}{2}$	33 $\frac{1}{2}$		28 $\frac{1}{2}$	33 $\frac{1}{2}$	33 $\frac{1}{2}$	31 $\frac{1}{2}$	33 $\frac{1}{2}$
Sprayers.	33 $\frac{1}{2}$	33 $\frac{1}{2}$	33 $\frac{1}{2}$	33 $\frac{1}{2}$	33 $\frac{1}{2}$	33 $\frac{1}{2}$	33 $\frac{1}{2}$	33 $\frac{1}{2}$	33 $\frac{1}{2}$
Stanchions.				33 $\frac{1}{2}$		33 $\frac{1}{2}$		33 $\frac{1}{2}$	
Stock Spray.	33 $\frac{1}{2}$			33 $\frac{1}{2}$	33 $\frac{1}{2}$	33 $\frac{1}{2}$	33 $\frac{1}{2}$	33 $\frac{1}{2}$	33 $\frac{1}{2}$
Stove Pipe.	33 $\frac{1}{2}$	33 $\frac{1}{2}$	33 $\frac{1}{2}$		28 $\frac{1}{2}$	33 $\frac{1}{2}$	33 $\frac{1}{2}$	32 $\frac{1}{2}$	33 $\frac{1}{2}$
Squares.	33 $\frac{1}{2}$	33 $\frac{1}{2}$	33 $\frac{1}{2}$	33 $\frac{1}{2}$	33 $\frac{1}{2}$	33 $\frac{1}{2}$	33 $\frac{1}{2}$	33 $\frac{1}{2}$	33 $\frac{1}{2}$
Sweat Pads.				33 $\frac{1}{2}$		33 $\frac{1}{2}$		33 $\frac{1}{2}$	
Tanks.						33 $\frac{1}{2}$	23	28 $\frac{1}{2}$	
Tank Heaters.						33 $\frac{1}{2}$	28 $\frac{1}{2}$	30 $\frac{1}{2}$	33 $\frac{1}{2}$
Tapes.	33 $\frac{1}{2}$		33 $\frac{1}{2}$	33 $\frac{1}{2}$	33 $\frac{1}{2}$	33 $\frac{1}{2}$	33 $\frac{1}{2}$	33 $\frac{1}{2}$	33 $\frac{1}{2}$
Taps and Dies.	33 $\frac{1}{2}$	33 $\frac{1}{2}$		33 $\frac{1}{2}$	37 $\frac{1}{2}$	33 $\frac{1}{2}$	33 $\frac{1}{2}$	34	33 $\frac{1}{2}$
Tin Snips.	33 $\frac{1}{2}$	33 $\frac{1}{2}$	33 $\frac{1}{2}$	33 $\frac{1}{2}$	33 $\frac{1}{2}$	33 $\frac{1}{2}$	33 $\frac{1}{2}$	33 $\frac{1}{2}$	33 $\frac{1}{2}$
Tools.	31	33 $\frac{1}{2}$	33 $\frac{1}{2}$	33 $\frac{1}{2}$	33 $\frac{1}{2}$	33 $\frac{1}{2}$	33 $\frac{1}{2}$	33 $\frac{1}{2}$	33 $\frac{1}{2}$
Tool Handles.	33 $\frac{1}{2}$		33 $\frac{1}{2}$	33 $\frac{1}{2}$		33 $\frac{1}{2}$	33 $\frac{1}{2}$	33 $\frac{1}{2}$	33 $\frac{1}{2}$
"V" Belts.	33 $\frac{1}{2}$	33 $\frac{1}{2}$		33 $\frac{1}{2}$		33 $\frac{1}{2}$	33 $\frac{1}{2}$	33 $\frac{1}{2}$	37
"V" Pulleys.	33 $\frac{1}{2}$	33 $\frac{1}{2}$	33 $\frac{1}{2}$	33 $\frac{1}{2}$		33 $\frac{1}{2}$	33 $\frac{1}{2}$	33 $\frac{1}{2}$	33 $\frac{1}{2}$
Vises.	33 $\frac{1}{2}$	33 $\frac{1}{2}$	33 $\frac{1}{2}$	33 $\frac{1}{2}$	33 $\frac{1}{2}$	33 $\frac{1}{2}$	28 $\frac{1}{2}$	32 $\frac{1}{2}$	33 $\frac{1}{2}$
Wagon Hdwe.	33 $\frac{1}{2}$			33 $\frac{1}{2}$		33 $\frac{1}{2}$	33 $\frac{1}{2}$	33 $\frac{1}{2}$	
Washers (Steel).	33 $\frac{1}{2}$	33 $\frac{1}{2}$	33 $\frac{1}{2}$		37 $\frac{1}{2}$	33 $\frac{1}{2}$	33 $\frac{1}{2}$	34	40
Wheelbarrows.	28 $\frac{1}{2}$	33 $\frac{1}{2}$	28 $\frac{1}{2}$	33 $\frac{1}{2}$	28 $\frac{1}{2}$	33 $\frac{1}{2}$	25	30	20
Wire (Galv.).	33 $\frac{1}{2}$	33 $\frac{1}{2}$	33 $\frac{1}{2}$		28 $\frac{1}{2}$	33 $\frac{1}{2}$	33 $\frac{1}{2}$	32 $\frac{1}{2}$	33 $\frac{1}{2}$
Waterers.			33 $\frac{1}{2}$			33 $\frac{1}{2}$	33 $\frac{1}{2}$	33 $\frac{1}{2}$	33 $\frac{1}{2}$
Wrenches.		33 $\frac{1}{2}$	33 $\frac{1}{2}$	33 $\frac{1}{2}$	33 $\frac{1}{2}$	33 $\frac{1}{2}$	33 $\frac{1}{2}$	33 $\frac{1}{2}$	33 $\frac{1}{2}$

SHEET 6

PLUMBING AND HEATING

(RETAIL MARK-UPS EXPRESSED IN PERCENT OF RETAIL PRICE)

Item	Mark-Ups by Towns						Average	O. R. H. A. Price Guide Mark-Up
	Orillia Niagara	London	Grimsb-y	Wind-sor	Wel-land	Milton		
Water Heaters.....						33 $\frac{1}{2}$	33 $\frac{1}{2}$	33 $\frac{1}{2}$
Bathroom Acc.....			33 $\frac{1}{2}$			33 $\frac{1}{2}$	33 $\frac{1}{2}$	
Blow Torch.....		33 $\frac{1}{2}$	33 $\frac{1}{2}$			33 $\frac{1}{2}$	33 $\frac{1}{2}$	33 $\frac{1}{2}$
Clearners.....		33 $\frac{1}{2}$	33 $\frac{1}{2}$			33 $\frac{1}{2}$	33 $\frac{1}{2}$	
Closets (Comb.).....						33 $\frac{1}{2}$	33 $\frac{1}{2}$	
Closet Seats.....		33 $\frac{1}{2}$	33 $\frac{1}{2}$			33 $\frac{1}{2}$	33 $\frac{1}{2}$	
Electric Pump.....			20			33 $\frac{1}{2}$	26 $\frac{1}{2}$	33 $\frac{1}{2}$
Faucets.....		33 $\frac{1}{2}$	33 $\frac{1}{2}$			33 $\frac{1}{2}$	33 $\frac{1}{2}$	33 $\frac{1}{2}$
Lavatory and Sink Figs.			33 $\frac{1}{2}$				33 $\frac{1}{2}$	
Packing.....			33 $\frac{1}{2}$			33 $\frac{1}{2}$	33 $\frac{1}{2}$	
Pipe and Fittings.....		33 $\frac{1}{2}$				33 $\frac{1}{2}$	33 $\frac{1}{2}$	33 $\frac{1}{2}$
Pipe Wrenches.....		33 $\frac{1}{2}$	33 $\frac{1}{2}$			33 $\frac{1}{2}$	33 $\frac{1}{2}$	33 $\frac{1}{2}$
Range Boilers.....			33 $\frac{1}{2}$			23	28 $\frac{1}{2}$	25
Shower Fittings.....			33 $\frac{1}{2}$			33 $\frac{1}{2}$	33 $\frac{1}{2}$	
Sinks.....			33 $\frac{1}{2}$			33 $\frac{1}{2}$	33 $\frac{1}{2}$	
Stops.....		33 $\frac{1}{2}$	33 $\frac{1}{2}$			33 $\frac{1}{2}$	33 $\frac{1}{2}$	33 $\frac{1}{2}$
Water Plumps.....			33 $\frac{1}{2}$			20	26 $\frac{1}{2}$	33 $\frac{1}{2}$

SHEET 7

PAINT, SUNDRIES AND ACCESSORIES

Decals.....				33 $\frac{1}{2}$	33 $\frac{1}{2}$	33 $\frac{1}{2}$	33 $\frac{1}{2}$	33 $\frac{1}{2}$	
Finishes.....		33 $\frac{1}{2}$	33 $\frac{1}{2}$	31	33 $\frac{1}{2}$	33 $\frac{1}{2}$	33 $\frac{1}{2}$	33	
Ladders.....		33 $\frac{1}{2}$			33 $\frac{1}{2}$	33 $\frac{1}{2}$	33 $\frac{1}{2}$	33 $\frac{1}{2}$	33 $\frac{1}{2}$
Paint Brushes.....		33 $\frac{1}{2}$	33 $\frac{1}{2}$	33 $\frac{1}{2}$	33 $\frac{1}{2}$	33 $\frac{1}{2}$	33 $\frac{1}{2}$	33 $\frac{1}{2}$	
Paint Sprayers.....					33 $\frac{1}{2}$	33 $\frac{1}{2}$		33 $\frac{1}{2}$	
Putty.....		33 $\frac{1}{2}$	33 $\frac{1}{2}$	33 $\frac{1}{2}$	33 $\frac{1}{2}$	33 $\frac{1}{2}$	35 $\frac{1}{2}$	33 $\frac{1}{2}$	33 $\frac{1}{2}$
Putty Knives.....	33 $\frac{1}{2}$	33 $\frac{1}{2}$	33 $\frac{1}{2}$	33 $\frac{1}{2}$	37 $\frac{1}{2}$	33 $\frac{1}{2}$	33 $\frac{1}{2}$	34	
Sand Paper.....	33 $\frac{1}{2}$	33 $\frac{1}{2}$	33 $\frac{1}{2}$	33 $\frac{1}{2}$	37 $\frac{1}{2}$	33 $\frac{1}{2}$	33 $\frac{1}{2}$	34	33 $\frac{1}{2}$
Steel Brushes.....	33 $\frac{1}{2}$	33 $\frac{1}{2}$	33 $\frac{1}{2}$	33 $\frac{1}{2}$	37 $\frac{1}{2}$	33 $\frac{1}{2}$	33 $\frac{1}{2}$	34	33 $\frac{1}{2}$
Stencils.....					37 $\frac{1}{2}$	33 $\frac{1}{2}$		35 $\frac{1}{2}$	
Wall Paper.....	37 $\frac{1}{2}$				37 $\frac{1}{2}$	33 $\frac{1}{2}$		36	

SHEET 8

MISCELLANEOUS ITEMS

Gloves.....	33 $\frac{1}{2}$	33 $\frac{1}{2}$	33 $\frac{1}{2}$			33 $\frac{1}{2}$	33 $\frac{1}{2}$	33 $\frac{1}{2}$
Seeds.....	33 $\frac{1}{2}$	33 $\frac{1}{2}$	33 $\frac{1}{2}$			33 $\frac{1}{2}$	33 $\frac{1}{2}$	
Toys and Dolls.....		33 $\frac{1}{2}$	33 $\frac{1}{2}$			33 $\frac{1}{2}$	33 $\frac{1}{2}$	

## APPENDIX C

## CANADIAN ASSOCIATION OF CONSUMERS

## BRIEF

Submitted to

THE JOINT COMMITTEE OF  
THE SENATE AND THE HOUSE OF COMMONS

ON

## COMBINES LEGISLATION

November, 1951.

*To the Joint Committee of the Senate and the House of Commons on Combines Legislation*

Mr. Chairman and Members of the Committee:

The Canadian Association of Consumers speaks for the consumers of this country. Its authority to do so lies in its wide membership of individual women from all parts of Canada, and the affiliation of fifteen National organizations, which participate in our work.

This is the third brief which we have presented to a Government Committee stating our opposition to the practice of resale price maintenance. We welcome this opportunity to restate our stand on this matter because we believe that this practice is detrimental to the interests of the consumer, and all Canadians are consumers. We hope that this discussion in Parliament will make Canadians more fully aware of the danger to our economy of special price-fixing privileges. The growth of the present practice in Canada has been due, in part, to lethargy. This lethargy can only be attributed to the fact that few Canadians have been aware of the nature of the practice, and of its effects on their own individual economic well-being and on the national economy as a whole.

The practice of resale price maintenance has now been condemned, after extensive investigation, as an exploitation of the consumer and contrary to the principles of a free market, in the recent statement of the Government of the United Kingdom and by the Federal Trade Commission in the United States. It has also been condemned in Canada in the findings of the MacQuarrie Committee.

The Canadian Association of Consumers opposes it because it believes that:

1. *Resale price maintenance leads to a higher general level of prices.*
2. *The interference of resale price maintenance with free market conditions has further serious results:*
  - (a) establishment of a private system of law and punishment;
  - (b) restriction of sales outlets and entry into trade.
3. *Resale price maintenance imposes on the general public penalties and disadvantages which far outweigh the rather doubtful benefits which the practice is claimed to confer on dealers and manufacturers.*



I. *Resale price maintenance leads to a higher general level of prices.*

It is in fact precisely designed to prevent reductions in price. Although many other arguments are brought forward in its defence, the only reason for the practice is to keep prices up. As Mr. McGregor told this Committee. "It is obvious that the effect is to keep prices, right across the board, higher than they would otherwise be." For once, in this tangled maze of retail trade practices, the words mean what they say.

A manufacturer setting maintained prices must set them high enough to give an adequate profit to the distributor with the highest costs. Under free market conditions, a distributor in a low-rent district would be expected to sell at lower prices than a distributor in the main business district. A retailer who has no delivery service, gives no credit and does not spend much on advertising should be able to sell more cheaply than a retailer who extends credit, delivers goods and advertises extensively. A store with a large turnover is expected to have lower prices than a small store with small sales. But for the items under resale price maintenance, the prices in all these stores are the same. And if prices are set high enough to give the high-cost retailer a satisfactory margin, they are set at a higher level than the low-cost retailer requires.

This is a severe penalty for the public. It seems clear to us that if retail prices were free the stores with lower costs could sell more cheaply.

This exploitation of the consumer is openly admitted in a statement by a businessman before the Akron Chapter of the American Marketing Association in 1948. Asked how a manufacturer fixes the resale price of his product, he said:

The answer, I am afraid, is that lacking any very scientific approach, he does it by a process of trial and error. The retail price obviously has to be a compromise and since it is considered safer to put it a little too high than a little too low, it is usually a compromise on the high side.<sup>1</sup>

Some of your witnesses have told you that some products whose prices are maintained are cheaper than similar products which the retailer is free to price. But the products are never identical. They may be many reasons why their prices differ—consumer preference, national advertising campaigns, fancy packaging, and so on. Prices of different articles cannot be used in comparison.

Sometimes comparisons are made, too, of margins allowed to distributors. Sometimes, you have been told, the distributor operates on a much narrower margin for price-maintained goods than on price-free goods. But this comparison is of no help to us. With price-maintained goods, the manufacturer often bears a high proportion of the total cost including most of the advertising: in such cases, distributors can obviously operate with a narrower margin than they need to carry price-free goods which they must advertise themselves. Therefore, the only valid comparison that can be made is between prices of the same products with and without resale price maintenance. We cannot make any comparisons of this nature in Canada today, but, fortunately, some such comparisons have been made in the United States.

Vermont, Texas, Missouri and Washington, D.C. are the only areas in the United States where the so-called Fair Trade laws, permitting resale price maintenance are not operative. In January, 1949, the magazine *Fortune* published an interesting comparison of prices in Washington, D.C. with those of nearby Maryland, where resale price maintenance is legally permissible. We quote a passage from the article:

Congressmen and lesser residents of the District of Columbia can lather up with a big tube of Barbasol for 29 cents; in fair-trade Maryland

<sup>1</sup> Resale Price Maintenance—Interim Report of the Committee to Study Combines Legislation—Ottawa, 1951, p. 19.

the same tube would cost 39 cents. The Congressmen can regenerate the blood cells with Lilly's Laxton Pulvules for \$2.29, instead of the fair-trade price of \$3.25. A bottle of *Old Grandad* is \$5.45 in Washington, D.C., \$6.65 (before State tax) across the line. Headache powders are a dime instead of 19 cents.

"A percentage study of 117 brand-name items showed thirty-five cost about a third less in Washington than in Maryland, thirty-eight about one quarter less and twenty-nine about a seventh less.

In Canada, while we are not able to compare prices of identical products in areas with and without resale price maintenance agreements, there is material available showing the effect of the import of resale price maintenance into Newfoundland since Confederation in 1949. The Report of the Royal Commission on the Cost of Living in Newfoundland, dealing with the effect of resale price maintenance on hardware prices, states:

"In several hardware lines in which there is resale price maintenance, the setting of prices has thus required dealers to take mark-ups definitely higher than those that had prevailed under more open competition."

We reproduce below a table from the report, showing the effect on two lines of hardware of particular interest to Newfoundland fisher folk, and comparing wholesale and retail prices and mark-ups before and after the introduction of resale price maintenance.

TABLE LXV—PRICES AND MARK-UPS

St. John

	Cost to Whole- saler	Whole- sale Price	% Markup	Cost to Direct Retailer	Cost to Small Retailer	Retail Price	Markup Direct Retailer	Markup Small Retailer
Battery.....March 1949 No. 6 Dry Cell.....	.46½	.55	18.3%	.46½	.55	.60	30%	9.1%
Battery.....Jan. 1950 No. 6 Dry Cell.....	.47½	.60	26.3%	.47½	.60	.80	69%	33½%
Paint Brush.....March 1949 (Teal 2").....	8.20 Doz.	10.05 Doz.	22.5%	8.20 Doz.	.838	.95	41%	13.3%
Paint Brush.....Jan. 1950 (Teal 2").....	6.40 Doz.	8.80 Doz.	37.5%	6.40 Doz.	.733	1.10	106%	50%

SOURCE: Report of the Royal Commission on the Cost of Living in Newfoundland, 1950: p. 78.

The Royal Commission reported that after the import of price maintenance the mark-up to direct retailers on batteries (No. 6 Dry Cell) jumped from 30 per cent to 69 per cent, and on paint brushes (2" Teal) from 41 per cent to 106 per cent. In the latter case, the wholesale prices of these brushes dropped, but the retail mark-up jumped so much that retail prices rose.

The foregoing examples of the effect of resale price maintenance are fairly clear evidence that the practice not only achieves its object of stopping prices from dropping, but that it actually leads to a higher general level of prices. We are confirmed in this view by the number of recent cracks in the maintained price structure, following the announcement by the Government that it intended to introduce legislation banning resale price maintenance. Consumers have reported to us numerous cases where stores already have cut prices which

were ordinarily fixed. It is interesting in this connection to note two contradictory passages in an editorial in the Canadian Pharmaceutical Journal of November 1, 1951:

We as pharmacists know that any legislation to prevent price maintenance will not lower prices . . . .

and, a few paragraphs later:

Already, before the legislation comes down, some retailers are taking advantage of the publicity by cutting prices; there has been an outbreak in Hamilton and another one in London and Woodstock. In other words, the Government even by expressing its intentions has loosened a few stones in the dam.

As consumers, we look forward hopefully to more "outbreaks" of lower prices of this nature. It is our firm belief that the general price level of goods presently affected by resale price agreements would be significantly lower without this restrictive practice.

The Canadian Pharmaceutical Association appears to be one of the best organized of the groups supporting resale price maintenance. We view with considerable alarm their efforts to maintain or in some cases to raise the prices of many goods, both within and without the drug field, at all outlets. Your counsel has already introduced a report from the Canadian Pharmaceutical Journal of September 15th, 1951, which shocked us considerably. It reported how the Board of Commercial Interests of the Canadian Pharmaceutical Association "handled complaints of price cutting". We would like to remind you of this one:

Case No. 3 was a complaint from Associated Pharmacies, Saint John, N.B., against the Nestle's Food Co., who have no policy of price stabilization and allow Lactogen to be sold through mail order catalogues and mail order offices at very reduced prices.

We have had three interviews with Mr. Grout of the Nestle's Co. He will not agree so far to stabilize retail prices on Lactogen. The best we have been able to obtain from him is a promise they will do their best to have mail order catalogue prices advanced to regular prices.

We see in this case a total disregard of the interests of the public. Here a strong group of distributors was attempting to extend the area of resale price maintenance and to obtain uniform higher prices so that their profits would not be threatened. This quotation also indicates a strange and very disturbing perversion of the language. Apparently "price stabilization" to the Canadian Pharmaceutical Association, means raising prices uniformly at all outlets. We hope that other advocates of resale price maintenance do not use these words in the same sinister sense.

There is other evidence that the best interests of the consuming public are not always uppermost in the minds of distributors who think to find security in maintained prices.

The Canadian Pharmaceutical Journal, February 1st, 1946, announced:

A meeting of retail druggists representatives held at Bigwin Inn last fall agreed upon a "Minimum net discount of 40 per cent for pharmaceutical products". Also agreed to was an adequate margin of profit relative to turnover for proprietary and patent medicines firms. The specific percentages agreed to were 33½ per cent for patent medicines and 40 per cent for cosmetics. A plan was suggested for giving a "seal of approval" on all invoices of manufacturers who "conformed". The approval would be given by the B.C.I. (that is, the Board of Commercial Interests we have just referred to).



(In parenthesis, we find ourselves objecting to the retailers' habit of quoting mark-ups as percentages on selling costs. The mark-up, it seems to us, should be reckoned on the cost-price: otherwise the very phrase loses its meaning. When the Canadian Pharmaceutical Association speaks of 33½ per cent on selling price it means 50 per cent cost. Fifty per cent on selling price means 66⅔ on costs. We think everybody would understand what was happening very much better if the committee always considered mark-ups and margins as percentages of costs.)

The druggists have been able to obtain the margins mentioned above. In the June, 1951, issue of the National Merchandiser, the house organ of the National Drug & Chemical Co., the manufacturer advertises a new price policy, already brought before you by Mr. McGregor, offering a minimum 40 per cent profit to druggists over and above discounts on orders. All druggists will receive this profit regardless of their need.

If any druggist refused to accept this profit we have little doubt he would be made to conform. The Canadian Pharmaceutical Association keeps its members in line by the method exemplified in the Journal of September 15th, 1951, from which we have just quoted:

Case No. 2 from the Manitoba Retail Druggists' Association was in regard to retail outlets in Winnipeg, one of which was a large drug outlet, not bringing prices into line with the new suggested minimum prices. The Manitoba Retail Druggists' Association worked diligently on this problem, principally locally. We co-operated with them by promptly contacting manufacturers whose lines were involved.

We have on file letters from the manufacturers we wrote, assuring us they have been successful in having up-to-date minimum prices established in Winnipeg on their lines.

We have been wondering why such an apparently flagrant breach of the spirit of the anti-Combines law cannot be prosecuted under the present law. From what has been said in this committee we understand that if the retail druggists' association sought themselves to enforce minimum prices on one of their members they would be guilty of an offence under the Combines Act. They are immune to prosecution only because the enforcement is done through the manufacturer's legal right to fix a resale price on his products. It seems to us that in such cases resale price maintenance is providing a cover under which retail organizations can operate what is almost indistinguishable from a combine in restraint of trade.

We believe this cover should be removed: individual retailers should be left free both by manufacturers and by their own colleagues to fix their own retail prices. The Canadian public must benefit.

## II. *The interference of resale price maintenance with free market conditions has further serious results:*

- (a) Establishment of a private system of law and punishment.
- (b) Restriction of sales outlets and entry into trade.

### *Establishment of a private system of law and punishment:*

We believe that most Canadians wish to keep our economy working as freely as possible. This means that apart from certain measures necessary to protect the public, buyers and sellers of goods should be allowed to compete freely on the market, and that anyone desiring to enter business for these purposes should be allowed to do so, and that once in business, dealers should be free to determine the prices at which they will sell their goods. Resale price maintenance prevents any price competition in the resale of the products

subject to its control. If the distributors of price-maintained goods do not maintain the prices set by the manufacturer they are often punished by being denied further supplies.

The very conception of one manufacturer being allowed to impose his prices on thousands of individual retailers, after he has sold them his goods, is repugnant to all our ideas of freedom, particularly when it is associated with the threat of a particularly brutal form of punishment—withholding of the supplies on which the retailers' livelihood depends.

As spokesmen for the consumers who suffer from every extension of such "special privileges", we want to see them stopped before they spread any further. We protest particularly against the argument which would put the price-fixing arrangements of sectional interests for their own profit on the same level as Government action.

Thus the Canadian Pharmaceutical Journal for November 1st, 1951 said:

The Government puts a floor on the price of wheat and the Provincial Governments set the price at which milk may be sold.

The Governments are accountable to us, Canadian consumers. If there is any price-fixing to be done they are the people to do it. The Government prints money: if private individuals do so it is the criminal offence of counterfeiting. If private organizations of retailers or manufacturers arrogate to themselves the right to fix prices, they are, we think, just as surely arrogating a power which belongs only to Government.

#### *Restriction of Sales Outlets and entry into Trade:*

To see the logical end of resale price maintenance it is necessary to go to a country where the practice is more widespread and longer-established than it has yet become here. Such is the United Kingdom, where the retailers' organizations themselves have recognized that its logical end it to restrict the people who may enter any particular trade.

Mr. McGregor has already quoted part of the following statement from the secretary of the British National Pharmaceutical Union. We would also like to draw your attention to the final paragraphs which Mr. McGregor did not read:

In our country all proprietary medicine vendors have to be licensed and we woke up to the fact that the number of those vendors was increasing at the rate of eight to nine thousand per year... It is a fact that owing to the success of the price-maintenance movement initiated by the P.A.T.A., 38 years ago, the prices of proprietary medicines are, in fact, maintained and the 20 to 30 per cent profit which these articles yield has proved a tremendous temptation to other shop-keepers to invade the proprietary medicine business. Grocers and other traders with large turnovers in household goods are accustomed to a gross profit of 12½ to 15 per cent; hence any goods selling at a protected price which yields 25 per cent gross are regarded as extremely profitable merchandise lines to be cultivated.

Hence you will see that the success of our own war to prevent price cutting within our own ranks has produced an army of competitors in our own business...

My organization decided that it would be reasonable to ask manufacturers of proprietary medical and surgical goods to restrict their channel of distribution to the chemists' trade.

We ask the proprietors of these articles to sign an agreement for seven years, undertaking only to sell these goods through chemists. In return we, on behalf of the chemists, undertake to give those goods a free market and the utmost possible sales assistance, plus a really friendly atmosphere in the shops.



On the other side, we ask all our members to refrain from giving window, counter or other displays of any kind to the goods or advertising material of any article within our specification which is not upon our list.<sup>1</sup>

In 1945 the Secretary of the Motor Trade Association of Great Britain, one of the most effective and tightly organized of the groups having as its aim the strict maintenance of resale prices, writes as follows:

If, however, the functions of the association are limited to resale price maintenance in the narrower sense, this object will, for this very reason, be defeated.

It seems reasonable to assume that a static policy of rigid and effective price maintenance will ultimately destroy itself, because the increase in numbers under the price protection umbrella will eventually produce the same low profit and no-profit conditions which arose under price cutting.

It follows, therefore, that some form of limitation is to be advocated whereby a control may be exercised on those seeking to enter the retail side of protected industry. This is by no means novel.<sup>2</sup>

Similar demands for the restriction of entry have also been voiced by the National Leather Goods and Saddlery Manufacturers' Association (*The Economist*, 8/5/1943), Retail Fruit Trade Association and Cosmetic and Toilet Preparations Trade Association of G. B. (*The Economist*, 3/6/1944), Electrical Contractors' Association (*The Economist*, 17/6/1944), National Federation of Grocers' and Provision Dealers' Associations (*The Economist*, 16/9/1944).

In Canada we have not yet reached quite the same point; but we seem to be heading in that direction. Our druggists are already seeking—as their representatives told you in this committee—to restrict the outlets for goods which they would like to confine to drug-stores. In some cases, they have had success. We would ask you to note one particular case, which is of immediate concern to many of our members with young children.

Canadian grocery stores are not permitted to sell the infant cereals, Pablum and Pabena, both of them price-maintained. In the United States, over 90 per cent of the sales of these cereals are made in grocery stores, and it would be a great convenience to Canadian mothers to be able to buy the cereals for the baby of the family in grocery stores at the same time as the rest of the family supplies are bought. But we cannot do that. In the early months of 1950 the sales of these cereals in Canada were dropping. (Up to that time these products were sold through drug stores). In May of that year, Mead, Johnson & Co., Belleville, Ontario, the manufacturers of Pablum and Pabena, announced that it would "distribute its two baby cereals, Pablum and Pabena, to the grocery trade through food brokers."<sup>3</sup>

This announcement had barely been made, when the decision was reversed. While the announcement in the "Canadian Grocer" was in process of printing, so much pressure was put on the company that Mead, Johnson & Co. decided to continue to distribute Pablum and Pabena exclusively through drug stores. This decision was announced in the Canadian Pharmaceutical Journal of the same date. The druggists have made no secret of the pressure put on the manufacturer. As soon as it was learned that Mead, Johnson & Co. contemplated changing its distribution policy, telegrams were sent to all the key retailers across Canada informing them of the situation and asking them to wire the President of the parent Mead, Johnson & Co. in Evansville, Indiana. A meeting

<sup>1</sup> Drug Trade News, September 13, 1937, p. 18.

<sup>2</sup> K. C. Johnson-Davies, *Control in Retail Industry*, (1945), pp. 7-8.

<sup>3</sup> Canadian Grocer, May 1, 1950.



of the President of Mead, Johnson & Co. and representatives of the drug association was arranged in Toronto on April 25th, 1950. The druggists report that in a brief presented to the manufacturers at that meeting, the Board of Commercial Interests of the Canadian Pharmaceutical Association stated:

That undoubtedly the departure from the policy of drug-store-only sales would result in the development of ill-will for the Mead, Johnson & Co. among a considerable section of the drug trade.<sup>1</sup>

At that time, Mead, Johnson & Co. was introducing several new pharmaceutical products to the market. In negotiations with the company over the distribution of Pabulum and Pabena, the druggists "made it quite clear that Canadian druggists' interests in these new products would be heightened by the knowledge that Mead, Johnson & Co. is continuing its present distribution policy".<sup>2</sup>

In this case the distributors of fixed-price goods were able to force the restriction of sales outlets, and protect their profits, regardless of the effect on the Canadian public.

*III. Resale price maintenance imposes on the general public penalties and disadvantages which far outweigh the rather doubtful benefits which the practice is claimed to confer on dealers and manufacturers.*

The foregoing sections have dealt with some of the penalties which resale price maintenance imposes on the public. We do not believe that any section of the economy secures sufficient benefit from this system to justify these penalties on consumers.

The statement is often made that resale price maintenance protects the small retailer, who would otherwise be put out of business by the bigger stores. We cannot agree with this statement. We consider that this practice creates only an illusion of safety for the little man. We know that the mark-up on price-maintained goods covers his costs and allows him a profit, but does he realize the effect of these same prices on the rest of his business?

By guaranteeing profits for the large retailers on a portion of their sales the system of resale price maintenance enables them to undercut the small distributors on price-free goods. This attracts customers to their stores and loses business for the small retailer.

We have already referred to the fact that the practice of resale price maintenance increases the number of outlets for price-maintained goods. These outlets are not only in small stores. We have noticed that in opening new departments, the chain stores carry a number of price-maintained goods in these new departments, (e.g., grocery stores (chain) now carry a number of toiletries such as tooth paste, hair shampoos, etc.) Can the trade stand these increased outlets? At the present time when incomes are high and sales are expanding it is difficult to convince the small retailer of the danger to his safety. But unless total sales continue to expand at a rate at least equal to the increase in the number of outlets, there is less business for each retailer. The result is that the cost per unit of sales increases, profits fall and the benefits of resale price maintenance to the small retailer disappear.

Some retailers, usually those in small communities, have expressed a fear that the removal of resale price maintenance will expose them to a prolonged price war. We do not feel this fear is justified. In small communities, success in retailing depends to a large extent on the personal ability of the retailer and on the service he gives to his customers. All stores compete under similar conditions: they know their clientele; they usually have about the same overhead expenses, variation in these depending on individual competence, and there is

<sup>1</sup> Western Druggist, May, 1950.

<sup>2</sup> Canadian Pharmaceutical Journal, May 1st, 1950.

seldom any store with capital reserves adequate to finance a prolonged price-war. Retailers in small urban and rural districts are already meeting the competition from large distributors with their mail-order business. Local stores with their opportunities to display goods for their customers, and with their ability to give immediate satisfaction will always have an advantage over the mail-order distributor.

Manufacturers often support the practice of resale price maintenance because they claim it provides them with more outlets for their goods. Manufacturers feel that the more frequently consumers see their goods on display the more their sales will increase. We realize that the success of some of the modern merchandising method has been due, in part, to this factor. But the result of the policy of seeking more and more outlets is that the manufacturer fixes higher prices for his goods (to cover the costs of the high-cost retailers). This means the manufacturer deliberately chooses more outlets rather than lower prices. This is certainly not always to the advantage of the public. Even in these days of imperfect competition, we believe that lower prices will bring increased sales. It is not unlikely that a greater volume of sales at lower prices would more than compensate the manufacturer for less opportunity to display his goods.

It has been claimed before this committee that the system of resale price maintenance stabilizes production and employment in the manufacturing industry. How can this be so? With these price-fixing agreements, any fall in incomes and hence in the demand for these goods cannot affect their prices immediately. Retailers are not allowed to lower prices in an attempt to try and stimulate sales. The adjustment to the changed demand for the product has, therefore, to be made at the manufacturing level. In a period of falling incomes the whole burden of the drop in demand made under price maintenance is felt immediately at the manufacturers' level and his only possible response in the short run is to lower production and dismiss workers. Resale price maintenance, by making prices more rigid, thus makes for much wider fluctuations at the production level.

Some manufacturers claim that they need fixed prices for their trade-marked goods to secure the good will of the consumer. Manufacturers need to earn the good will of consumers by producing goods of good quality and by maintaining the quality. Consumers like goods sold under the trade mark of the manufacturer (sometimes referred to as branded goods). We like the system because we consider that manufacturers selling their products under trade marks are anxious to build up markets for their goods, and so aim to keep the quality of their goods stable. But this does not mean that we want the prices of these goods to be fixed. Few consumers would conclude that because the price varied from store to store that the quality of identical packages of branded goods also varied. The prices of many branded goods which are not price-maintained vary to-day from store to store. It is obvious that the costs of distribution vary from shop to shop and the consumer should have the choice either of buying in the store with lower costs (and paying less), or in the store with higher costs (and paying more).

Manufacturers of certain consumer durable goods claim that the practice of resale price maintenance is necessary to them, so that they can ensure good servicing of their products. We do not understand the connection. Consumer durable goods, especially household electrical equipment, have, to-day reached a high standard of performance. Few of these goods to-day require any servicing for a long period after they are put into use. The consumer would be better off if he paid a lower price for the article and paid his own service charges separately. Under the present arrangement he has to pay for service whether he needs it or not.



We have also noted the continual reference during your hearings to the danger of the "loss-leader" practice, and the confusion about what the phrase "loss-leader" means. All too often, it seems to us, your witnesses have used it as meaning what we call "healthy price competition." We are baffled, for example, by the statement of Mr. Preston, representing the Canadian Pharmaceutical Association, which is reported on page 151 of your proceedings.

We assume that the minute the Government were to legislate against price maintenance every article that is now price-maintained would become overnight a loss leader.

This, and some of the other statements that have been made about "Loss Leaders", seem to us to be deliberate exaggeration of the problem. But we recognize that they may be a legitimate fear on the part of some small retailers lest bigger organizations with greater resources deliberately try to put them out of business by a predatory price-war. If this danger exists, we would draw your attention, and theirs, to Section 498A of the Criminal Code. It makes it an offence:—

To engage in a policy of selling goods at prices unreasonably low for the purpose of destroying competition or eliminating a competitor.

We would have no objection to any strengthening of the law which may be considered necessary to prevent this or any other means of destroying competition. But in order to prevent predatory attempts by a bigger organization to ruin a smaller one, we cannot conceive it necessary to destroy all price competition at the retail level. That is what resale price maintenance does. If we are going to have laws to defend competition, let them defend it.

These arguments lead us to maintain that the practice of resale price maintenance hold no substantial long-run benefits for retailers or manufacturers to make up for the very serious penalties it imposes on the consuming public.

There have been claims that resale price maintenance benefits the consumer by making budgeting easier for the consumer who knows prices will not vary from store to store. We know of no consumer who would object to a revision of her budget because she found she could buy an automobile for \$1,200 rather than \$1,300. It is also claimed that resale price maintenance, by eliminating price competition between distributors, makes it possible for retailers to give consumers better service, and that service competition adequately replaces price competition as a protection of consumer interests. But service competition ultimately adds an additional charge on the price the consumer pays. We are confident that consumers would prefer lower varying prices to higher fixed prices, and would prefer to make their own choice between two stores—one with lower prices and one with better service. To conclude, we summarize our arguments:

We oppose the practice of resale price maintenance because we believe:

1. *That resale price maintenance leads to a higher general level of prices.*

It creates a situation in which organized retailers almost inevitably exert a constant pressure on manufacturers for increased profit margins. It gives them a sanction—through the manufacturer's right to fix prices—which enables them to force all retailers to fall into a line with a set price policy. This pressure is always exerted towards keeping prices up, never towards bringing them down.



2. *That interference with free market conditions results in the establishment of a private system of law and punishment.*

From the reports of certain retail organizations we conclude that their methods of enforcing their own private rules about price maintenance are extremely effective; and we observe that such methods would already be illegal if they were not concealed behind the manufacturer's right to fix his own resale prices. The individual merchant is deprived of the right to decide his own prices: he is converted, whether he likes it or not, (in Mr. McGregor's pregnant phrase) from "the purchasing agent of the consumer into the selling agent of the manufacturer". If competition among retailers is thus to be eliminated, we, with most other Canadians, will demand that the Government itself takes responsibility for fixing prices in the public interests, instead of private groups doing so in their own interests.

3. *That interference with free market conditions restricts sales outlets and entry into trade.*

We have shown that it has already had this effect in the United Kingdom, where resale price maintenance is more general than it is here. There are already signs that Canada is heading in the same direction. If Canadian retailers' organizations have not yet got to the point of restricting new entrants into the retail field, they have already started trying to restrict outlets for certain types of goods to their own stores.

4. *That it imposes on the general public penalties and disadvantage which far outweigh the rather doubtful benefits which the practice is claimed to confer on dealers and manufacturers.*

We have examined some of these claims at some length, because we do not wish to seem indifferent to the prosperity of our retailers and manufacturers. But we can only reach the conclusion that the advantages claimed for resale price maintenance are largely illusory and certainly short-lived. In the long run, we do not believe that the practice can benefit the small store against the large one; we do not believe it can benefit the manufacturer to be subject to increasing dominance by retail organizations; and we do not believe that resale price maintenance is the only—or even the best—protection for small retailers against predatory price-cutting (which is the only meaning we can give to the term "Loss-leaders").

The fundamental issue at stake in this question is the freedom of our economy. We believe that resale price maintenance restricts that freedom. It makes our economy more rigid; it restricts the freedom of individual merchants and it prevents price reductions in the articles affected. It removes from the consumer the protection of free competition and leaves him exposed to a system of private price fixing. We still believe that free price competition can effectively regulate prices. If any further regulation of prices is needed, such regulation should be done by the Government in the interests of all Canadians, rather than by private groups acting in their own interests.

In our free economy, price fixing by combines agreements is an offense: price fixing by private groups should be equally an offense.

On what basis can a particular group be given a right which conflicts with the basic principles of a nation's accepted free economy practices?

Respectfully submitted,

Mrs. W. R. WALTON,  
President Canadian Association of Consumers.

## APPENDIX D

BRIEF TO THE JOINT COMMITTEE ON COMBINES LEGISLATION  
from  
THE ALBERTA BRANCH, CANADIAN ASSOCIATION  
OF CONSUMERS

The Alberta Branch, Canadian Association of Consumers feels that Price Maintenance tends to keep the cost of distribution high.

We feel that the progressive retailer under this system cannot pass on to the Consumer any savings and thus increase his sales.

We think the consumer should pay a price related to the cost of the product and of the service he buys.

On the whole it keeps prices on certain articles far beyond consumer reach.

Respectfully submitted,

Mrs. W. E. STEWART,  
*Provincial President.*

## APPENDIX E

CANADIAN ASSOCIATION OF CONSUMERS  
(Manitoba Branch)

## BRIEF

Submitted to

THE JOINT COMMITTEE OF  
THE SENATE AND THE HOUSE OF COMMONS

ON

COMBINES LEGISLATION

November, 1951

BRIEF TO THE JOINT COMMITTEE ON COMBINES LEGISLATION

From

THE MANITOBA BRANCH, CANADIAN ASSOCIATION OF CONSUMERS

The Manitoba Branch, Canadian Association of Consumers, advances the following arguments against Resale Price Maintenance to which there is a strong and wide-spread objection amongst consumers in our province.

1. The whole history of the growth of trade shows that the only protection for the public against exploitation lies in free competition. If such competition is excluded the safeguard of the public interest is lost. The resale price maintenance is a violation of this fundamental principle. So fundamental is this principle that the law endeavours to stop combines and monopolies. It has its root in the decision of the courts in the time of Queen Elizabeth that the monopoly for the manufacturer of playing cards granted by the Queen to a courtier was against the public interest and was, therefore, invalid.

2. Price Maintenance paves the way for combines and monopolies. Where the product is manufactured by a small number of companies it is a very simple thing for them, by a gentlemen's agreement, to fix a basic price. Without a fixed price at the retail level, it would be impossible to maintain a combine at the manufacturing level.

3. Resale price maintenance requires some method of enforcement. It is price control by private firms. Moreover, penalties are imposed on the retailers who fail to sell at the fixed price. Against such penalties there is no recourse at law. Further, Parliament has refused to establish a general system of price controls. Why, then, should some articles be subject to price control at the option of private interests!

4. The editorial in Saturday Night of November 24th, expressed concisely a basic reason for opposition to resale price maintenance.

Once a manufacturer fixes prices the tendency of the organized retailers is to demand higher margins and be satisfied with lower turnover. Where retail prices are competitive they have to take lower margins and try for bigger turnover.

5. The power to fix prices opens the way to exorbitant profits limited only by what the manufacturer believes the consumer will pay for his product. If the law were to allow this practice of price maintenance the public interest could be protected against abuse only by an excess profits tax.

6. A fixed resale price pays for the brand name which has established and its maintained by extravagant advertising for which the consumer pays. If the quality is good the product will sell at a price commensurate with that quality and in competition with other products of the same nature. It has been proved to the consumer's disadvantage that—price does not always reflect quality.

7. Finally the Manitoba Branch, Canadian Association of Consumers endorses the findings of the MacQuarrie Report that "resale price maintenance constitutes a real and undesirable restriction on competition by private individuals".

Signed on behalf of the Manitoba Branch, Canadian Association of Consumers,

Mrs. C. K. NEWCOMBE,  
*President.*

Miss AVIS CLARK,  
*Secretary.*



## APPENDIX F

CANADIAN ASSOCIATION OF CONSUMERS  
ONTARIO BRANCH

## BRIEF

Submitted to

THE JOINT COMMITTEE OF  
THE SENATE AND THE HOUSE OF COMMONS

ON

## COMBINES LEGISLATION

CANADIAN ASSOCIATION OF CONSUMERS  
Ontario Branch  
Ottawa, Ont.

November 30th, 1951

To: The Joint Committee,  
Both Houses of Parliament, to consider the Interim Report of the MacQuarrie  
Committee on Price Maintenance.  
Gentlemen:

The Ontario Branch, Canadian Association of Consumers present the  
following report to the Joint Committee set up to consider the Interim Report  
of the MacQuarrie Commission on Price Maintenance.

*Organization:*

The Ontario Branch, Canadian Association of Consumers joins with the  
National Association, Canadian Association of Consumers, in making repre-  
sentation with respect to "Price Fixing"—otherwise known as "Resale Price  
Maintenance".

*Action Taken:*

Upon learning of the decision of the Government to appoint a new committee  
to consider the subject of Resale Price Maintenance, we immediately wrote the  
Prime Minister, The Right Honourable Louis St. Laurent, Hon. Stuart Garson,  
Minister of Justice, Hon. Douglas Abbott, Minister of Finance and a number  
of other Ministers of the Crown, and all Ontario Federal Members of Parliament,  
urging their support of the proposed legislation.

*Three Briefs:*

The Ontario Branch, Canadian Association of Consumers, being the largest  
Provincial Branch, and Ontario being the largest and most diversified industrial  
Province, we feel we have a special interest and have given this legislation  
considerable study and publicity and are in favour of the recommendation of  
the MacQuarrie Commission. We have supported the National body of the  
Canadian Association of Consumers in the three briefs already presented to  
the three government committees set up to deal with Prices,—(Parliamentary  
Committee; Royal Commission on Prices and the MacQuarrie Commission)—and  
have urged each time Government legislation against Price Fixing.

*Freedom of Price to Fluctuate Basic*

The Ontario Branch feels that if we are to continue to have a system of  
free enterprise in Canada, "*The freedom of price to fluctuate is basic*", and any  
fixing of prices works to the disadvantage of the consumer.

*Women Control 85 per cent Buying and 51 per cent Vote*

The Canadian Association of Consumers was organized four years ago and is organized on a *National, Provincial and Local* basis. It is a young and growing association of consumers supported by 56 of the largest National Women's Organizations in Canada. It is well known that approximately 85 per cent of the buying power of the country is controlled by women buyers and women also control 51 per cent of the voting power.

*Surveys Research*

To-day, through surveys, study, research, the Canadian Association of Consumers has become an authoritative voice that speaks for and represents all kinds and classes of consumers. We are non-political, non-denominational, non-racial. We have no axe to grind but work to improve the standard of living in all Canadian homes.

*R.P.M. Works to Detriment Consumers*

We believe Resale Price Maintenance acts to the detriment of Consumers for the following reasons:

- (a) *Eliminates* price competition
- (b) *Operates to restrict* the supply of goods to the consumers at lowest possible price.
- (c) *Discriminates* against the cash customer.
- (d) *Deprives* the consumer of the free choice of the product which he wishes to purchase.
- (e) *It tolerates inefficiency* in distribution.
- (f) *Reduces incentive* of retailer to institute new methods of distributing merchandise which would reduce cost to retailer and in turn his price to the consumer.
- (g) *Protests* the manufacturer, wholesaler, retailer, at the expense of the consumer.
- (h) *Supply and demand* no longer are effective factors as the manufacturer can regulate the supply and demand a fixed price.

*General Observations**The Woman Consumer To-day*

The ordinary consumer to-day shows strain and frustration as she tries to plan and stretch her dollars and feels and knows that she is not getting the quality, standards and service she should be receiving from the industrial trade for the price she is required to pay. Many unfair and unjust practices confront her during her shopping and marketing for the home and family requirements. She is looking for service at lower prices, *not* higher, and feels Resale Price Maintenance stops store-keepers providing many services needed by the rigid fixed price system in use to-day. The enforced habit of having to carry parcels during the war has continued into the present. The trade clings to the protection and benefits afforded during the war, which have not changed sufficiently to post-war planning, e.g., delivery service, cash and carry, cash sales with no benefit to consumer compared to credit buying.

*Lose Customers and Sales by R.P.M.*

In that circumstance, by reason of price-fixing, the consumer is less and less patronizing the store, as she finds she may as well place her orders of merchandise by telephone as there is no variation in price with respect to similar merchandise. The merchant will find that he may be *losing* several sales on each telephone order by not attracting customers into his store.

### *Customer Resistance*

The customer has to build up a real consumer resistance as she has to face continually very high prices and finds herself caught in the spiral of inflation. By price-fixing she sees every effort is being made by the trade to keep prices at the high level of to-day's fixed rate and it may take a long period of adjustment and corrective to establish good and friendly relations with the consumer.

### *Just and Unfair*

A *just and unfair price* must be worked out by the trade, based on actual costs. The consumer's living costs must be returned to a more *normal* and *balanced* level if our economy is to become stabilized and safe from the forces of destruction that assail us on every side. Only at all levels of the trade and by all working groups within industry co-operating and working together will this be brought about.

### *Production Not Adequately Related to Price*

Industry must see that present methods of Trade and Commerce are not geared to-day to the Atomic Age in which we live. When bread and milk, the two most basic and important nutritional food requirements in our diet, come into the realm of price-fixing, as consumers we feel we have just about had everything that the consumer can take. As they say: "*We have really had it*". We hear where milk supplies are threatened to be cut off because an Independent Dairy (Ottawa) tries to experiment for the benefit of consumers and reduce the price of milk per quart by cash and carry method, in his milk bar. This case has had to be carried to the courts for protection to try out this experiment. This indeed shows how powerful and widely used trade restricted practices have become.

### *Releasing Curbs Brake Agreements*

Governments, manufacturers, retailers, must release the curbs and brakes, private agreements, etc., of price-fixing that control prices to-day. They must be alert and eager to give the consumer some of the benefits in reduced prices. When Nature produces a bountiful harvest, etc., we find less and less is the consumer deriving any help from this all powerful and creative source. The *mark down* in prices lags far behind the *mark up*; and the consumer resents and is justly concerned when tax benefits are announced by Government to see the trade move in and at once expropriate any benefit, and say, with one voice, "It will all be taken up in higher wages, expansion plans", etc., etc., or other various sources, all divorced from a reduction in price to consumers. This kind of planning and thinking is not building the right relationship. The consumer must be able to purchase, if she so desires and needs, at the lowest possible price. *If the method is right the price will be right.*

### *Future Checking*

We hope, gentlemen, when this legislation is enacted that it will not be necessary for either the Government or the consumer to have to police and check prices constantly in the stores regarding former resale price maintenance practices. Rather let all trade groups quickly accept the changes that are needed and plan for improved service to your *best customer*—"the woman consumer".

### *Delay of Report Benefits Trade*

We are pleased to note that all members of the Chamber of Commerce and all retail members were not in agreement in the decision to ask the Government to delay the proposed legislation re resale price maintenance. This brief delay, etc., in receiving further evidence regarding resale price



maintenance has given the trade a chance to reduce and clear up some of the stock that has been piling up through recently reduced spending by consumers and the Christmas trade should help further reduce slow moving stock.

### *New Start*

We hope the New Year will see a new, fresh start in putting our price merchandising affairs in order, where many new patterns of service and benefit will be worked out for the consumer.

Through the Canadian Association of Consumers, Canadian women are trying to take an intelligent and responsible part in the economic life of our country and they are trying to solve some of the problems facing us as a nation. We ask, also, that Government and business likewise respond to the challenge of our age and create in Canada the pattern for a better world of peace, prosperity and plenty for the future well-being of all citizens.

### *Sound Leadership*

The Canadian Association of Consumers will continue to give sound leadership to all members and affiliated National Organizations who look to us to speak with an authoritative voice. With faith and determination, Canadian Association of Consumers and all its Branches will carry out the purpose of our organization which are appended as follows:

Section 2, Constitution—Canadian Association of Consumers.

#### Purposes:

- (a) To unite the strength of consumers to improve the standard of living in Canadian homes.
- (b) To study consumer problems and make recommendations\* for their solution.
- (c) To circulate information on matters of consumer interest and to secure and evaluate opinions.
- (d) To bring the views of consumers to the attention of Governments, Trade, Industry, and to provide a channel for these to the consumer.

Respectfully submitted,

MRS. CLIFTON GRABAN,

*President, Ontario Branch  
Canadian Association of Consumers.*

213 Wilbrod St.,  
Ottawa, Ont.

## APPENDIX G

## BRIEF TO THE JOINT COMMITTEE ON COMBINES LEGISLATION

from

THE NEW BRUNSWICK BRANCH, CANADIAN ASSOCIATION  
OF CONSUMERS

Speaking on behalf of the Executive of the New Brunswick Branch of the Canadian Association of Consumers, we strongly support the Federal Government in its proposed legislation regarding resale price maintenance.

The economy of Canada is founded on competition, and the retailer should be allowed to let the consumer share in the reduced prices which might result from such competition.

Moreover, in a democracy no individual or group of individuals should be allowed to make laws and enforce them.

Respectfully submitted,

Mrs. V. E. FALKJAR,  
*President, N.B. Branch,*  
Canadian Association of Consumers.

Dr. JESSIE I. LAWSON,  
*Secretary, N.B. Branch,*  
Canadian Association of Consumers.

Saint John, N.B.,  
November 29th, 1951.

## APPENDIX H

## BRIEF TO THE JOINT COMMITTEE ON COMBINES LEGISLATION

from

## THE SASKATCHEWAN BRANCH, CANADIAN ASSOCIATION OF CONSUMERS

The Saskatchewan Branch of the Canadian Association of Consumers, in accord with the opinion of the National body, has long been opposed to the practice adopted by many manufacturers of fixing a minimum re-sale price, below which retailers may not sell without risking a cut-off of further supplies or other disciplinary action.

The C.A.C. considers this practice unfair, economically unsound and a factor in the high cost of living. Through our National Association we have repeatedly requested legislation to make it illegal. We re-iterate that request at this time.

We have reviewed the MacQuarrie Report and its recommendations and find ourselves in agreement with the basic opinion these express. Summarized, these state that re-sale price maintenance is an undesirable restriction on competition by private agreement. Its tendency is to discourage economic efficiency. It is a manifestation of a restrictive and monopolistic practice. It does not promote general welfare. It is becoming more widespread. For these reasons and others the MacQuarrie Committee recommended that the practice be made illegal. We concur with these recommendations.

The Saskatchewan Branch of the C.A.C., urges that action be taken to ban this practice with a minimum of delay and at this Session of Parliament if at all possible.

Respectfully submitted,

MRS. C. M. SUGGITT,  
*Provincial President.*

## APPENDIX I

### CANADIAN ASSOCIATION OF CONSUMERS (Quebec English Branch)

#### B R I E F

submitted to

#### THE JOINT COMMITTEE OF THE SENATE AND THE HOUSE OF COMMONS

on

#### COMBINES LEGISLATION

November, 1951.

BRIEF TO THE JOINT COMMITTEE ON COMBINES LEGISLATION

from

#### THE QUEBEC ENGLISH BRANCH OF THE CANADIAN ASSOCIATION OF CONSUMERS

The Quebec English Branch of the Canadian Association of Consumers wishes to place on record before the Joint Committee of the Senate and the House of Commons on Combines Legislation, its opposition to the present practice of resale price maintenance. In doing so it speaks for its twenty-seven local branches and, as far as can be ascertained, for its full membership of 1,800 members, all of whom have been circularized with a full explanation of our attitude in the matter, and none of whom have registered a contrary point of view.

Our provincial association believes that the practice of resale price maintenance violates the basic principles of our free marketing system, and that this fact alone should condemn it, whatever may be the arguments of expediency and group protection advanced in its favour. We submit that this price maintenance practice creates, at best, conditions and temptations for the industries employing it that favour monopolies and that substitute an individual's personal decision for the normal play of free price competition. At its worst, it exploits the consumer in low-income sectors of the country, by imposing price-levels on them that have no relation to the real overhead expenses of their local retailers. Price maintenance may be merely bad in principle for the wealthier consumer; it is bad in practice for all those whose low or average incomes makes slight economies of major importance.

As consumers, we would like to protest against the arguments that the housewife prefers to buy at fixed prices. We have found no evidence of such an odd attitude among consumers, who are just now striving desperately to



stretch their budgets to cover essentials and who judge an article by their own experience for its past quality, not by the fluctuations in its price. In questioning our members, we have found no case either where shoppers prefer the costly burden of services they have not required as a substitute for the price competition they know is their main protection against competition.

As consumers, and in many cases wives of retailers, we are anxious to keep the small retailer in business. We believe however, that the principles which protect the public and promote both efficiency and progress within our competitive economy, cannot be safely set aside, even for the protection of any one group, through that group's own decision. Even if the consumer benefited by the present practice, and we submit that in the aggregate they do not, we feel that the freedom of our market, the confidence consumers are entitled to place in the unhindered play of the competitive system that protects them, and their right to reap the benefits of a retailer's economies in the management of his affairs, are basically more important than a temporary advantage, resting on faulty principles.

The relationship of the retailer and consumer makes him as much an agent of the consumer as of the manufacturer. It is only in such a role that he can win the confidence of his customers and flourish. This relationship is violated when he is obliged to sell "brand" articles at a price above his normal margins of profit, merely to give luster to a manufacturer's "name" goods.

In conclusion, we would like to submit that price maintenance exploits even those who profit by it, since we are all consumers. That outlawing it would cause no proven damage, since the fears expressed by those who defend it have so far been chiefly forebodings, without actual evidence to justify them; and that maintaining the practice would cause its dangerous and rapid expansion throughout our economy. For these reasons we urge the Joint Committee on Combines Legislation to recommend the immediate banning of resale price Maintenance.

Respectfully submitted,

Mrs. H. E. VAUTELET,  
Provincial President,  
Canadian Association of Consumers.

#### APPENDIX "J"

WOODWARD STORES LTD.

Vancouver, B.C., Canada

Telephone Tatlow 5231—Cable Address "Woodwards"

In your reply please quote REF

James Sinclair Esq., M.P.,  
Chairman:  
Special Committee on Resale Price Maintenance,  
Houses of Parliament,  
Ottawa.

Sir:

For many years the Woodward organization has sought by every means in its power so to conduct its business that it can offer the best merchandise to customers at the lowest possible prices. This we believe to be the major purpose of the merchandising profession.

Price maintenance however has made it impossible for the merchant to reduce his prices below an arbitrarily fixed minimum, and has nullified his

constant search for new techniques which will enable him to sell for less. We wish therefore wholeheartedly to endorse the recommendation of the MacQuarrie Commission against resale price maintenance.

Experience has taught us that business interests are best served by placing first and foremost the interests of the public. Whoever else may benefit from maintained prices it is not the public. It is possible that certain manufacturers may benefit by their ability to command a predetermined price for their product, whatever its quality may be. It is possible that certain retailers may derive advantage from the restriction of effective competition. But it is also sure that the consumer is frequently denied savings he might have enjoyed through the efficiency which only competition can promote. The use of competitive methods in bringing merchandise to the public is a powerful weapon against inflation.

Many forms of retail outlet are to be found in Canada. There are stores where customers serve themselves in order to save, and stores where they may receive exclusive individual attention. There are stores where they may order by telephone, have delivery, purchase at the same price for credit as for cash, and there are stores where none of these advantages are offered. Is it reasonable to compel them all, irrespective of the amount of service they offer and irrespective of their widely different operating costs, to sell their product at the same price—and that price the highest the market will bear?

The whole of our Canadian economy is geared to a free enterprise system. It is the basis of our political creed. The man in the street has faith in it. He believes that sooner or later unfettered competition and the laws of supply and demand will defeat the bogey of inflation. The freezing of competitive selling is the very antithesis of free enterprise. For these reasons we oppose and have opposed it in principle and practice for 60 years.

We strive to sell merchandise in an efficient manner and at minimum margins consistent with good business. This too is the aim of many manufacturers with whom we do business and who have built up for their products an enviable reputation respected by retailers and consumers alike.

It is no more to the interest of the retailer than of the manufacturer to sell acceptable merchandise unprofitably. In free competition with other lines a product invariably finds its own level, and the manufacturer who has earned a good name will continue to enjoy the patronage of the consuming public.

Many products that have no resale price set by their manufacturer have sold successfully and profitably over a long period. There is no reason why the merchandise sold at maintained prices today would not enjoy a similar success when freed from resale restrictions.

Much of our merchandise is not price controlled; yet the practice is growing and as it grows, so surely is the stimulus of competition eliminated. So too grows the prevalence of excessive trade-in allowances, of premiums and prizes offered with major purchases to present an illusion of extra value. Sound business ethics demand that savings effected by competent merchandising be passed directly to the public.

The foregoing brief is respectfully submitted for your consideration.

W. WOODWARD.

#### APPENDIX K

**Reason for Judgment, C. Duquette et al vs. Chas. E. Frosst & Co. Superior Court, Montreal.**

CONSIDERING that the sending of a catalogue like that filed, as Exhibit P-11, by respondent to petitioners by name constitutes a sollicitation or an offer of sale and that the sale may become perfect by the sending of the order;

CONSIDERING, however, that this offer of sale was made on condition that the purchaser sell the products purchased from respondent at the prices indicated in the said catalogue, and that petitioners were aware of this condition and had complied with same since some twenty years;

CONSIDERING that if this condition is legal, respondent had a right to refuse the order seeing the violation of this clause by petitioners by selling certain products of respondent at lower prices than those indicated in the catalogue, and that if this clause is illegal, the contract depending on same is null and void, and petitioners may not demand execution of same by an order of this Court;

CONSIDERING furthermore that the principal conclusions of the petition for an injunction are not consistent with the provisions of section 957 C.C., the purpose of which is to prevent the commission or the continuance of an act, but not to request the execution of certain definite acts and that the other conclusions are not, for the moment, within the province of this Court;

CONSIDERING that the injury caused to petitioners, if there is such injury, is neither great nor irreparable and that they have a proper and effective recourse by a damage action that belongs to them by right if respondent has not abided by the undertaking to which it was bound;

CONSIDERING that the balance of the disadvantages would rather be to the detriment of respondent whose whole commercial policy and organization for the past fifty years would be greatly shaken, if not destroyed, by an order of injunction as demanded by the petition;

CONSIDERING that the request for an injunction, if it is granted, would have the effect of deciding the merit of the case by ordering the execution of a contract, that is to say exactly what petitioners seek to obtain by the action that must accompany the order of injunction;

CONSIDERING that the petition of petitioners is unfounded both in fact and in law;

ON THESE GROUNDS:—

DISMISSES the said petition, with costs.







HOUSE OF COMMONS  
Fifth Session—Twenty-first Parliament  
1951  
(Second Session)

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-51654

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JOINT COMMITTEE OF THE SENATE  
AND THE HOUSE OF COMMONS

ON

COMBINES LEGISLATION

Joint Chairmen—The Honourable Senator A. L. Beaubien  
Mr. James Sinclair, M.P.

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MINUTES OF PROCEEDINGS AND EVIDENCE  
No. 15

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FRIDAY, DECEMBER 7, 1951

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INCLUDING SECOND AND FINAL REPORT

OTTAWA  
EDMOND CLOUTIER, C.M.G., O.A., D.S.P.  
PRINTER TO THE KING'S MOST EXCELLENT MAJESTY  
CONTROLLER OF STATIONERY  
1951



### ERRATA

The submission of price information made to the committee by the Canadian Electrical Manufacturers' Association on November 30, and printed as Appendix "G2" to the Minutes of Proceedings and Evidence of Monday, December 3, contains percentage figures relating to profits and losses. In the submission, as printed, there is no indication as to which figures represent losses, and a reader would assume that all are "profit" figures.

The complete submission, corrected to indicate "loss" percentages, is reprinted as *Appendix E* to this day's Minutes of Proceedings and Evidence.

## REPORT TO THE SENATE AND HOUSE OF COMMONS

FRIDAY, December 7, 1951.

The Joint Committee of the Senate and the House of Commons on Combines Legislation begs leave to present the following as its

### SECOND AND FINAL REPORT

Your Committee, having considered in accordance with the terms of reference the Interim Report on Resale Price Maintenance of the Committee appointed to study the Combines Legislation, recommends to the House and Senate that a Bill along the lines of the bill hereto annexed be introduced to carry into effect the recommendations of the said Report.

Certain groups appearing before the Committee have expressed the view that one of the consequences of prohibiting resale price maintenance will be to enable large and powerful retailing interests to engage in a policy of selling goods at unreasonably low prices for the purpose of destroying the independent retailer. This Committee does not think that under present conditions there is any substantial likelihood of such policies being engaged in but would recommend to the government, in the event of such policies being practised, the vigorous enforcement of Section 498A of the Criminal Code which reads as follows:

Every person engaged in trade or commerce or industry is guilty of an indictable offence and liable to a penalty not exceeding \$1,000.00 or to 1 month's imprisonment, or if a corporation, not exceeding \$5,000.00 who

- (a) is a party or privy to, or assists in, any transaction of sale which discriminates, to his knowledge, against competitors of the purchaser in that any discount, rebate or allowance is granted to the purchaser over and above any discount, rebate or allowance available at the time of such transaction to the aforesaid competitors in respect of a sale of goods of like quality and quantity;

The provisions of this paragraph shall not, however, prevent a co-operative society returning to producers or consumers, or a co-operative wholesale society returning to its constituent retail members, the whole or any part of the net surplus made in its trading operations in proportion to purchases made from or sales to the society;

- (b) engages in a policy of selling goods in any area of Canada at prices lower than those exacted by such seller elsewhere in Canada, for the purpose of destroying competition or eliminating a competitor in such part of Canada;

- (c) engages in a policy of selling goods at prices unreasonably low for the purpose of destroying competition or eliminating a competitor,
- 1935, c. 56, s. 9.

Your Committee is of the view that if other types of predatory price cutting, the possibility and the nature of which cannot at the present time be foreseen, take place, the Government should then consider placing before Parliament further amendments of the Combines Investigation Act or the Criminal Code prohibiting such other types of predatory price cutting and providing adequate penalties for them.

A copy of the minutes of proceedings and evidence of the Committee is appended.

All of which is respectfully submitted.

A. L. BEAUBIEN,  
JAMES SINCLAIR,  
*Joint Chairmen.*



## PROPOSED BILL

### An Act to amend the Combines Investigation Act.

His Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

1. The Combines Investigation Act, chapter twenty-six of the Revised Statutes of Canada, is amended by adding thereto, immediately after section thirty-seven thereof, the following section:

“Dealer” defined.

37A (1) In this section “dealer” means a person engaged in the business of manufacturing or supplying or selling any article or commodity.

Resale price maintenance.

(2.) No dealer shall directly or indirectly by agreement, threat, promise or any other means whatsoever, require or induce or attempt to require or induce any other person to resell an article or commodity

- (a) at a price specified by the dealer or established by agreement,
- (b) at a price not less than a minimum price specified by the dealer or established by agreement,
- (c) at a markup specified by the dealer or established by agreement, or
- (d) at a markup not less than a minimum markup specified by the dealer or established by agreement,

whether such markup or minimum markup is expressed as a percentage or otherwise.

Refusal to sell or supply goods.

(3) No dealer shall refuse to sell or supply an article or commodity to any other person for the reason that such other person

- (a) has refused to resell or to offer for resale the article or commodity
  - (i) at a price specified by the dealer or established by agreement,
  - (ii) at a price not less than a minimum price specified by the dealer or established by agreement,
  - (iii) at a markup specified by the dealer or established by agreement, or
  - (iv) at a markup not less than a minimum markup specified by the dealer or established by agreement, or
- (b) has resold or offered to resell the article or commodity
  - (i) at a price less than a price or minimum price specified by the dealer or established by agreement, or
  - (ii) at a markup less than a markup or minimum markup specified by the dealer or established by agreement.

Penalty.

(4) Every person who violates subsection two or three is guilty of an indictable offence and is liable on conviction to a penalty not exceeding ten thousand dollars or to two years' imprisonment, or if a corporation to a penalty not exceeding twenty-five thousand dollars.

**Inquiry.**

(5) The Commissioner has authority to institute and conduct an inquiry into all such matters with a view of determining whether this section has been or is being violated and to make a report thereon in writing to the Minister, and for such purposes the Commissioner has all the powers, authority, jurisdiction and duties that are conferred upon him by this Act, including sections sixteen and seventeen, with respect to an inquiry as to whether a combine exists or is being formed.

(6) A report of an inquiry under this section shall be dealt with in the same manner as a report of an inquiry or investigation under this Act as to whether a combine exists or is being formed.

2. The part of subsection two of section thirty-nine A of the said Act that precedes paragraph (a) thereof is repealed and the following substituted therefor

(2) In a prosecution under section thirty-two or *thirty-seven A* of this Act or under section four hundred and ninety-eight or four hundred and ninety-eight A of the Criminal Code:

**ADDENDUM:**

Minutes of Proceedings, Thursday, November, 29, 1951, page 417, line 8:  
*Also present for the House of Commons should include Mr. Croll.*

## MINUTES OF PROCEEDINGS

FRIDAY, December 7, 1951

The Joint Committee of the Senate and the House of Commons on Combines Legislation met at 10.30 o'clock a.m. The Joint Chairmen, the Honourable Senator A. L. Beaubien and Mr. James Sinclair, M.P., were present, Mr. Sinclair presiding.

*Also present:*

*For the Senate:* The Honourable Senators Burchill, Dupuis, Golding, Hawkins, Horner.

*For the House of Commons:* Messrs. Blair, Boucher, Carroll, Carter, Cauchon, Croll, Dickey, Mrs. Fairclough, Messrs. Fleming, Fulton, Garson, Harrison, Hees, Jutras, MacInnis, Mott, McLean (*Huron-Perth*), Roberge, Shaw, Stuart (*Charlotte*), Thatcher, Welbourn.

In accordance with the second recommendation contained in the Fifth Report of the Sub-Committee on Agenda and Procedure, concurred in on December 5, the Committee proceeded to a discussion of Mr. Croll's notice of motion relating to loss leaders.

At 12.05 o'clock p.m., strangers were excluded and the Committee continued its deliberations in camera.

The Committee proceeded to consideration of the proposed draft bill tabled by Mr. T. D. MacDonald on November 14, which was printed as *Appendix A* to that day's Minutes of Proceedings and Evidence.

Mr. Stuart moved that the Committee adopt, as its Second and Final Report to the House, the following:

Your Committee, having considered in accordance with the terms of reference the Interim Report on Resale Price Maintenance of the Committee appointed to study the Combines Legislation, recommends to the House and Senate that a Bill along the lines of the bill hereto annexed be introduced to carry into effect the recommendations of the said Report.

Certain groups appearing before the Committee have expressed the view that one of the consequences of prohibiting resale price maintenance will be to enable large and powerful retailing interests to engage in a policy of selling goods at unreasonably low prices for the purpose of destroying the independent retailer. This Committee does not think that under present conditions there is any substantial likelihood of such policies being engaged in but would recommend to the government, in the event of such policies being practised, the vigorous enforcement of Section 498A of the Criminal Code which reads as follows:

Every person engaged in trade or commerce or industry is guilty of an indictable offence and liable to a penalty not exceeding \$1,000.00 or to 1 month's imprisonment, or if a corporation, not exceeding \$5,000.00 who

(a) is a party or privy to, or assists in, any transaction of sale which discriminates, to his knowledge, against competitors of the purchaser in that any discount, rebate or allowance is granted to the purchaser



over and above any discount, rebate or allowance available at the time of such transaction to the aforesaid competitors in respect of a sale of goods of like quality and quantity;

The provisions of this paragraph shall not, however, prevent a co-operative society returning to producers or consumers, or a co-operative wholesale society returning to its constituent retail members, the whole or any part of the net surplus made in its trading operations in proportion to purchases made from or sales to the society;

- (b) engages in a policy of selling goods in any area of Canada at prices lower than those exacted by such seller elsewhere in Canada, for the purpose of destroying competition or eliminating a competitor in such part of Canada;
- (c) engages in a policy of selling goods at prices unreasonably low for the purpose of destroying competition or eliminating a competitor, 1935, c. 56, s. 9.

Your committee is of the view that if other types of predatory price cutting, the possibility and the nature of which cannot at the present time be foreseen, take place, the Government should then consider placing before Parliament further amendments of the Combines Investigation Act or the Criminal Code prohibiting such other types of predatory price cutting and providing adequate penalties for them.

Mr. Croll moved in amendment thereto that the recommendations contained in the second and following paragraphs be struck out and the following substituted therefor:

1. That no dealer shall sell or offer for sale directly or indirectly any commodity at a price less than 5 per cent above cost.
2. That this provision shall not apply to the following sales:
  - (a) of goods damaged or of goods which form the balance of a line which has been discontinued or is out of season
  - (b) of sales for charitable purposes or relief agencies
  - (c) of perishable merchandise which must be sold promptly in order to forestall deterioration and consequent loss
  - (d) of merchandise sold in bona fide clearance sales if advertised marked, and sold as such
  - (e) of merchandise sold upon the final liquidation of any business and is advertised, marked and sold as such
  - (f) under the Bankruptcy or Winding-Up Act or by judicial order.
3. "Cost" means invoice cost to bona fide dealer or replacement cost, whichever is lower, less cash or quantity discounts, plus excise duties and sales taxes, if any.
4. "Directly or indirectly" is intended to include trade practices by way of evasion of the Act such as
  - (a) combination sales of commodities
  - (b) inflated trade-in allowances
  - (c) concealed price reductions in premiums and discounts and other sales practices, such as "loss leaders".
5. That it be made an offence, and dealt with under the Summary Convictions Section of the Code.

At 12.45 o'clock p.m. the Committee adjourned until 3 o'clock, p.m. this day.

## AFTERNOON SITTING

The Joint Committee of the Senate and the House of Commons on Combines Legislation met in camera at 3.00 o'clock p.m. The Joint Chairmen, the Honourable Senator A. L. Beaubien and Mr. James Sinclair, M.P. were present, Mr. Sinclair presiding.

*Also present:*

*For the Senate:* The Honourable Senators Aseltine, Burchill, Dupuis, Golding, Hawkins.

*For the House of Commons:* Messrs. Blair, Boucher, Carter, Cauchon, Croll, Dickey, Fleming, Fulton, Harrison, Hees, Jutras, MacInnis, Mott, McLean (*Huron-Perth*), Roberge, Shaw, Stuart (*Charlotte*), Thatcher, Welbourn.

The Committee resumed discussion of Mr. Stuart's motion and Mr. Croll's amendment thereto.

And the question having been put on the said amendment, it was negatived.

Mr. Fulton then moved, in amendment to Mr. Stuart's motion, that all the words after the words *Your Committee* in the proposed report to the House be struck out and the following substituted therefor:

- (1) was appointed to consider the MacQuarrie Committee's report on resale price maintenance and appropriate amendments to the Combines Act based thereon;
- (2) it became evident early in our proceedings that not sufficient time was available to enable the Committee to call all the witnesses and study all the evidence it would be necessary to hear and study in order to arrive at a sound conclusion on these matters;
- (3) your Committee, having been much impressed by the very real concern felt by retail merchants over the danger to them from unfair competition and "loss-leadering" practices by powerful chain and departmental stores if price maintenance is eliminated, is of the opinion that if any legislation is ever to be enacted against the one type of practice it must be accompanied by complementary legislation against the other;
- (4) your Committee has been unable, in the time at its disposal, to study and work out legislation which it can confidently recommend as being constitutional and effective to meet the danger of "loss-leadering";
- (5) your Committee therefore reports that it is not in possession of sufficient evidence on which to base legislation and recommends that further careful consideration be given to this whole subject, and particularly to the question of Fair Trade Laws along the lines of those in force in the United States of America, as a proper and workable solution of the problem.

After discussion, and the question having been put on the said amendment, it was negatived.

And the question having been put on Mr. Stuart's motion, it was agreed to.

In accordance with the recommendations contained in the Fourth Report of the Sub-Committee on Agenda and Procedure, concurred in on November

30, and in the Fifth Report of the said Sub-Committee, concurred in on December 5, the following documents are printed as appendices to this day's Minutes of Proceedings and Evidence:

*Appendix A:* Brief submitted to the Committee by the National Council of Women.

*Appendix B:* Brief submitted by the Great Western Garment Company Limited.

*Appendix C:* Brief submitted by the Retail Merchants Association of Saskatchewan.

*Appendix D:* Brief submitted by the Bulova Watch Company Limited.

At 3.48 o'clock p.m. the Committee adjourned *sine die*.

A. L. BURGESS,  
*Clerk of the Committee.*



## EVIDENCE

DECEMBER 7, 1951.

10.30 a.m.

The CHAIRMAN: Gentlemen, we have a quorum.

Mr. MACINNIS: Mr. Chairman, just a remark on a small controversial point before we begin. As the House convenes today at two o'clock, I assume we will adjourn at 12.30.

The CHAIRMAN: Fine. If we do not finish our business we can always move an adjournment to three o'clock or seven o'clock.

Our order of business today is, first of all, an open committee according to our last committee decision on procedure, to hear a discussion from members of the committee, five minutes apiece, on Mr. Croll's notice of motion relating to loss-leaders which will be found at page 417, or page 452 of our proceedings.

Mr. CROLL: Mr. Chairman, the resolution appears on page 452 of our proceedings. I am not going to read it, in the interest of time, but I point out that at this stage the time has come—

Hon. Mr. GOLDING: Would you mind reading it? I have not brought mine here with me today.

Mr. CROLL: The time has now come for us to unwrap our position and emerge from behind the committee curtain and give our views on the MacQuarrie report and its consequences. I take the historical position of the Liberal party on trusts, cartels and combines, I am against them, and I am reminded of the words of the late Mr. King, repeated by Hon. Mr. St. Laurent on a few occasions, that when special interest conflicts with general interest, the Liberals stand for the general interest. So this gives us an opportunity now to lower the boom on the price fixers. I believe that the committee will recommend the report, which will be followed by legislation, the result of which, I believe, will be to set free the retailer and the consumer and give real meaning to the words "free enterprise". I do not think parliament can longer sanction conspiracies or combines, whether they be horizontal or vertical. Parliament cannot allow a system of private law with kangaroo courts. I appreciate that the loss-leader is difficult of precise definition. Most of us can recognize one when we see one, but it is very hard to define. But in its effect it causes minor dislocations, it misleads the consumers and diverts business from the fair price dealers. In broader effect, it wipes out competitors and concentrates power in big business and big centres, and big business gets bigger and bigger. Mr. Hougham, who was before the committee yesterday, made a statement that stayed with me, I quote:

When giants contend, the little fellow is trodden underfoot.

I believe that the retailer is not wedded to resale price maintenance and the evidence has indicated there is no great profit motive. He makes better profit out of other items. Nevertheless, he supports it in self-defence and self-preservation. It is a defence mechanism for him to stave off what he considers the predatory economic enemy, the department, the chain and the mail order houses. The retailers collectively through their organizations have checked these giants on resale price maintenance. They have said to them "If I have to maintain this price everybody else must maintain this price", and they have been effective in that respect.

I think the small retailer is second only in interest to the consumer. The consumer comes first. I do not believe he is expendable, I believe it would be a great social loss if we abandoned the small retailer. We cannot abandon him because his species is very necessary to the community. If we let loose the predatory price cutters they can have a Roman holiday cutting prices. I believe they will create havoc in the trade. It will be a short lived holiday for the consumer because in the end it will be expensive to the consumer.

This resolution is made with the hope of bringing in a companion resolution to combat loss-leader practices, which will protect the community from monopolies and from controls of avenues of distribution and production. Granted this resolution is far from perfect, and there is much room for improvement in it, but I would ask the members who have views on it not to punch it full of holes but to suggest something better. I am not going to talk about how you are going to enforce it and obtain convictions, but I know in the United States they have had some success in bringing to an end this practice that I think should not prevail. If it does no more than say to those to whom it needs to say, "The government does not approve of such practices," in effect it may say to them, "Live and let live."

I do not think we should leave our committee without in some way getting across to the people of this country that there is no immunity for price cutters, that we are not looking for temporary objectives, what we are looking for is reduced prices that will stay reduced and at the same time give to the retailer and consumer a fair deal and give the manufacturer a fair profit.

Mr. Chairman, I would ask the members to read the resolution again and I ask their support for this resolution because I think it can do more good than harm.

Mr. JUTRAS: I welcomed Mr. Croll's motion last Thursday, because I thought it was desirable for the committee to arrest its attention on that particular phase which is detrimental to the interest of all concerned with the possible exception of the promoter of combines.

I confess I am no judge of the form of formula before us, and as a matter of fact it didn't receive much support from the witnesses who appeared before us, but I was impressed in both the bread and match cases by the fact that they achieved their end greatly through the device of price cutting. On the other hand, I am sure, particularly after the evidence submitted to us, that resale price maintenance is no answer to that problem. As a matter of fact it vests full control in the manufacturer's hands and therefore facilitates the establishment of such organizations.

Nobody in this committee, I am sure, wants to see the little merchant discriminated against or placed in an economically impossible situation. I for one would like to give him some assurance of his survival even after price maintenance has been removed.

Mr. FLEMING: I just have this word to say, I do not think we need to spend any time speaking against monopolies. We are all against monopolies, conspiracies and cartels. We did not need evidence about loss-leaders to convince us of their undesirability. I think we are agreed there is no doubt it is a thoroughly vicious practice. What I understood we were dealing with was the proposal of Mr. Croll to pass legislation to outlaw that aspect of the problem.

Now, the questions naturally arise in reviewing a draft of the kind Mr. Croll has submitted, is it going to achieve its purpose, is it workable, is it constitutional? I presume the Department of Justice must have studied this draft with that in mind. I think we should have now from the Minister of Justice some statement presenting his view and the view of his department



in regard to this draft legislation. Is it in the view of the department constitutional, is it enforceable, is it workable?

Hon. Mr. GARSON: Are you referring to Mr. Croll's amendment?

Mr. FLEMING: Yes, that is what I understood we were to discuss this morning. We are not discussing the whole question of the reference to the committee. We are dealing with the draft legislation submitted by Mr. Croll on November 29, and I think the committee is entitled at this point to the assistance of the Department of Justice on those aspects of Mr. Croll's draft.

The CHAIRMAN: The minister is here as a member of the committee.

Mr. FLEMING: We should not think of dealing with any matter such as this without assistance from the Department of Justice. For instance, we were considering simple amendments to a bill this week in the Radio Committee and members said they would not think of touching them until we called in some law officers of the Department of Justice. This is a matter of very great importance and I think members of the committee, whether we are lawyers or not, all want at this point the assistance of the Department of Justice based on a study of this draft of Mr. Croll's which was put in a week ago yesterday.

Hon. Mr. GARSON: First of all I would like to make clear that no study has been made by the Department of Justice or anybody else that I know of of Mr. Croll's amendment. It came before the committee before I heard anything about it and I think all the committee members here saw it at exactly the same time. With great deference I think Mr. Fleming is getting the cart before the horse because the first thing the committee has to decide is whether in principle it favours the prohibition of loss-leaders, and then I think it has to decide, as the point of substance involved, whether it considers loss-leaders as cost plus 5 per cent or cost plus mark-up or merely the invoice cost price. And it is only,—as I am sure my hon. friend who is a lawyer will realize himself,—it is only after the client in these matters has made up his mind as to the substance he wants to have put into the draft that the lawyer addresses himself to the form in which that substance is to be put.

On the question of whether or not it is constitutional, I think I can give my friend assurance that we have had a judgment of the Privy Council affirming the constitutionality of the Combines Investigation Act, which states that certain economic offences fall sufficiently within the ambit of the criminal law, and therefore within federal jurisdiction. So the committee does not need to concern itself very deeply about constitutional aspects.

Whatever the committee makes up its mind to do, if you will instruct the Department of Justice I think we can produce a good statute which will be constitutional, *intra vires*, and which will hold water. But on these other points which have to be decided first of all, in view of all the accusations which have been made in this committee that the government is rushing this through and dominating the committee and imposing its will on the committee, I think it might be preferable to let the committee discuss the matter and see what conclusions it could arrive at. I would be glad to review those conclusions when they are defined rather than to be accused of giving any hint to the effect that the government members of the committee should or should not favour any loss-leader legislation.

So far as the difficulties of enforcement are concerned, the committee members are in a pretty good position to judge for themselves what they might be. They have heard a number of witnesses and I do not think there were any two of those witnesses who agreed on what would be a proper definition of "loss-leader" or anyone who would be brave enough to attempt to define it at all. The witness said that a definition might be this, that, or something else.



Now, if you are going to prohibit something you must first of all obtain a clear idea of what it is you are going to prohibit. The committee members have all heard the witnesses the same as I have, and I shall not presume to offer them any advice as to what judgment they should reach upon that evidence. Unless or until the committee reaches some opinion on this point, I do not think there is any occasion for me to make any pronouncement concerning it as minister.

If we can reach an agreement on what we think a loss-leader is, and if we can all agree that we should prohibit it, then perhaps we should get Mr. MacDonald to come back so that we could say to him: "here is what we have in mind. Do you think you can make it stick? Do you think you can enforce it?"

If you want my opinion—it would be a rather vicarious one because I am not the person directly engaged in enforcement—I think the first point we have to decide in this committee on the basis of the evidence we have heard, is what is the substance we are going to put into this provision.

A lawyer cannot draft an agreement until his client tells him what he wants to have put into that agreement. So I think we must first of all decide what we have in mind as a loss-leader. I can assure the committee that if the committee makes up its mind as to what substance it wants to have put into this provision, we can whip it in shape in short order.

Mr. FLEMING: Mr. Chairman, whatever merit there may be in the minister's argument, it strikes me that it raises a problem about the procedure we are embarked on this morning. I was sitting in another committee at the moment when the last motion was passed dealing with the procedure to be followed this morning. I think the statement made by the minister does not quite agree with my understanding of what we are to deal with here this morning. I thought that Mr. Croll's resolution was to go right away into the discussion this morning, and that when it had been discussed, the committee would then go into executive session with regard to the broader subject referred to it, which is what I understood the minister to say should be disposed of first.

Hon. Mr. GARSON: Oh no, no!

Mr. FLEMING: You say that we should consider Mr. Croll's proposal only in relation to the larger question. I wish we could get this clarified because I hope we are not going to run into another wrangle or misunderstanding about procedure. We do not want anything of that kind. I have come here under another impression than the one the minister has indicated as being the proper course to follow in the discussion.

The CHAIRMAN: As a matter of fact, I would much prefer to have it done in our own committee rather than in public, but Mr. Croll and Mr. MacInnis felt this matter of loss-leader had arisen so often in the discussion that there should be an opportunity for members to indicate their interest in it in a discussion. What is a loss-leader? Is it this definition of Mr. Croll's in the first paragraph, cost plus 5 per cent?

The other thing which occurs to me is that when a committee recommends legislation to the House, then once the House is seized of it, it is for the House and the Department of Justice actually to turn it into actual drafting language of a statute.

The hon. Mr. Garson indicated his own feeling that the end to be achieved by this is constitutional under the Combines Act.

Mr. MacINNIS: I do not think there should be any difficulty in regard to procedure in this matter. What we have now before us is a motion or resolution which we will discuss in this part of the committee that we are in. We will discuss the principle of it as if we were discussing the principle of a bill on

second reading. Then, when we come to the in camera part of the meeting, if we have approved this resolution, then that is a part of what we will discuss in camera and we will discuss the ways and means of giving effect to it.

The CHAIRMAN: That was my understanding.

Hon. Mr. GARSON: The committee will make up its mind.

The CHAIRMAN: We are not going to make up our minds in public.

Hon. Mr. GARSON: I appreciate that; we are not going to make up our minds in public. A matter of this kind will involve very practical points, and we will be very glad to provide facilities to put them into the form of legislation.

Mr. FLEMING: We are all thinking about expediting our task where we can, and if the only principle involved is whether we are for or against the practice of loss-leaders, I do not think the committee need spend a very long time at this stage of its proceedings.

The CHAIRMAN: That is why I indicated the 5 minute procedures.

Mr. FLEMING: I feel everybody thinks that the loss-leader is a vicious practice. The other point which I thought we were to discuss was whether legislation of the kind introduced by Mr. Croll would achieve the purpose. But if that is a matter for discussion at a later stage of the committee, I do not think we need to spend very much longer on this part of it.

The CHAIRMAN: Mr. Croll took only 4 or 5 minutes to indicate his position.

Hon. Mr. GARSON: May I suggest that it is hardly enough for us to say that we are against loss-leaders. We are against loss-leaders no doubt, and we are against sin.

Mr. MacINNIS: Who is?

Mr. HEES: Are you not against sin?

Hon. Mr. GARSON: I think that back of the discussion of the principle involved, we have got to say what the loss-leader is that we are against; and until we all agree upon the loss-leader that we are against, all our talk about being against loss-leader is just vapor.

Mr. FULTON: Well, doesn't that statement of the minister show the importance of having Mr. Fleming's question answered? In Mr. Croll's motion we have before us not a statement of general principle, upon which I agree we would have to have a definition of terms, but a specific proposal for legislation in concrete form, because the proposal is in concrete form and not in mere general terms.

What we want to know from the minister or from the Department of Justice is not a statement as to principles, but whether this specific proposal is in fact constitutional and workable so that it would be proper for the committee to recommend this specific proposal to the House. That is what Mr. Fleming's question was.

Hon. Mr. GARSON: I would point out to my honourable friend something I apparently have not got over to them yet, that what should be the substance of the definition of a loss-leader is for the committee to decide; and with due appreciation of the compliment that my honourable friend pays me, I do not claim any greater ability to determine this than any other member of the committee. Now, as to whether it is constitutional or not, I must confess we have never considered these proposals of Mr. Croll's seriously from that standpoint. We have not gone into them. Yet what I said a few moments ago still stands—that when the committee makes up its mind as to what, in substance, it regards as a loss-leader, I do not think we will have any difficulty in drafting legislation to prohibit it, legislation which is constitutional in every way.

The CHAIRMAN: Mr. Fleming can now start with his five minutes.



Mr. FLEMING: As I understand what the minister has said, this question is how we work out or try to achieve what Mr. Croll has set out to do, which, I think, is generally endorsed by members, namely to try to curb this vicious practice of loss-leaders. That is something that has to be worked out in keeping with that other assignment of the committee, that is something we have to do when we come into our executive session. Now, we are only discussing the principle of Mr. Croll's proposals, that is what you have indicated we are doing now, Mr. Chairman, the principle being to attack this vicious practice of loss-leaders. I think we need spend no more time on that but go into our executive session and get to the meat of the problem.

The CHAIRMAN: That is what I thought we should do, but the members voted it down.

Mr. DICKEY: On a point of order, it is not only the general principle of whether or not you are against loss-leaders—Mr. Croll has put forward a suggestion and I thought we were to have five minutes to express in general terms whether we thought that this particular expression of opposition to loss-leaders was what members would support.

The CHAIRMAN: Every member who wants to is going to have five minutes to say what he wants to say, and then at the end of that time we are going into executive session. Whatever you say during your own five minutes is your own responsibility.

Mr. HEES: Mr. Chairman, I believe that if this legislation to abolish price maintenance passes, the small retailer must be protected against the loss-leaders, and I believe that it is very important that the legislation against loss-leaders must be workable and enforceable legislation. First of all, as has been said here, this committee must try and decide what is a loss-leader, and that is a very, very, big question and will take a lot of time to decide. I believe that a great deal of study must be given by this committee to this important legislation on the question of what is a loss-leader, and that we should devote ourselves to such a study without closing our proceedings today. I believe, also, that this committee should give serious study to the fair trade laws of the United States. These fair trade laws must be satisfactory to both consumers and retailers because they are accepted by the consumers and retailers in 45 of the 48 states, and their economy and way of life and of doing business is almost identical with our own, and there are about 12 times as many of them as there are Canadians. I do not want to pattern what we Canadians do on what people in the United States do, but it gives us a wonderful opportunity of studying what we might do here in the way of successful legislation, because we have there a pattern of fifty years of actual practice in the United States to study, and I think we should take full advantage of it. I think we must remember that resale price maintenance was outlawed in the United States in 1900, which is over 50 years ago. During the next 30 years the situation produced by outlawing price maintenance was found to be unsatisfactory by consumers and retailers, with the result that in 1931 the first fair trade law appeared in California, and between 1931 and the present day 44 more states added it to their laws, so that today there are 45 of the 48 United States applying fair trade laws. As I say, that is very, very impressive to me because, as I said yesterday, there are far more consumers than there are retailers, and if the fair trade laws had not proved to be successful or satisfactory to consumers, they would certainly have been thrown out and not brought in by an ever-increasing number of states in the United States, so, for my money, they are very successful and practical legislation that has been O.K.'d by the great majority of consumers and retailers in the United States. I believe that we might find, as the United States has found over the last 50 years, that fair trade laws are greatly preferred to simply abolishing resale



price maintenance, and I believe that this matter requires a great deal of further study by this committee, because we simply cannot afford to bring in either unworkable or unenforceable legislation.

Mr. CROLL: You think you cannot deal with it now, is that what you mean?

Mr. HEES: I think we should study your proposal a great deal more. In principle, I am 100 per cent for it, but I want to make sure that before I give my O.K. to this specific type of legislation that it will be the best type of legislation to protect the retailer.

Mr. FULTON: And actually will protect him.

Mr. HEES: And actually will protect him, and I also want to give consideration to the question of whether fair trade laws are not preferable to outlawing price maintenance. The people of the United States have overwhelmingly endorsed these fair trade laws, and that, to me, is very, very impressive. I think we are doing a very foolish thing in this parliament in view of the path taken by the country to the south of us, with 12 times our population and having 50 years to work the thing out, and I believe we are conceited to think that what we are attempting to do now is better than what has been evolved in the United States.

The CHAIRMAN: Thank you, Mr. Hees. Mr. MacInnis.

Mr. MACINNIS: I think I can be very brief in this. I should say, first of all, that I am in favour of the principle enunciated in Mr. Croll's resolution, that I am against the use of loss-leaders in merchandising in much the same way as I am opposed to scabbing on the trade union field.

I realize that there will be great difficulty in formulating effective legislation in this regard, but that is no reason why we should not attempt it once the principle is accepted. We heard, as has already been stated, a great many definitions of a loss-leader during the sittings of this committee. Not many of them, in my opinion, would be satisfactory as a definition in law, but if we approve of the principle and refer the matter to the Department of Justice for action, I do not see that there is any reason why we would not get effective legislation, although I am quite sure there is no time now to draft that legislation. I think the department would have to have more time than is available before this parliament adjourns or prorogues. That is all, Mr. Chairman.

The CHAIRMAN: Thank you, Mr. MacInnis. Mr. Fulton.

Mr. FULTON: Mr. Chairman, I agree with Mr. MacInnis that the principle of outlawing or banning loss-leadering practices is acceptable, and say that if parliament is going to pass legislation to eliminate resale price maintenance then it must pass legislation to eliminate loss-leadering. But when I say I accept that principle I do not go along with Mr. MacInnis to say you can find a principle in Mr. Croll's motion. I wish you could. That is the difficulty I think the committee is confronted with. Mr. Croll's motion does not assert a principle and stop there. It contains a definition of loss-leadering, and my difficulty is to convince myself that Mr. Croll's definition—at least his proposal here—will, in fact, do what we are all anxious to do, and that is to afford a real protection to the merchant.

Now, I am not going to go further into the detail of that at this point, but I want to go back to say this: Mr. Croll referred us to a statement made yesterday by Mr. Hougham, a most impressive statement as he said. I was equally impressed by another statement made by Mr. Hougham which, I think, is a principle that this committee should be guided by. Mr. Hougham's statement was this:

Do not throw the baby out the window with the bath water.

He was referring there in that homely and very forceful simile to the necessity of protecting the retail merchants and not being carried away by a desire to

accomplish something which I do not believe we have any evidence to show will be accomplished by this legislation. In other words he was saying: While you may be moved by a desire to benefit the consumer, if you allow that desire to influence you to eliminate price maintenance, without doing anything else, then in so eliminating it you will be throwing the retailer out the window to the wolves, to cut-throat competition on the part of the big departmental and chain stores.

I must say that in my opinion, we have not actually any sufficient or adequate evidence before us to prove the merits or demerits of price maintenance in its effects on consumer costs either one way or the other, but we certainly do have adequate evidence before us to show that the retailers are concerned, and justifiably concerned, and that we must be concerned for them, about the dangers which are opened up to them if resale price maintenance is eliminated and loss-leadering is allowed to take place.

Mr. Croll has expressed tremendous concern over the safety and welfare of the independent retailer. Every one of us shares that concern, but I take the view that if we are going to give effect to that concern, Mr. Chairman, we must satisfy ourselves that we have sufficient evidence on which to base the legislation which is proposed to the committee, both by the combines commissioner in the draft he submitted and by Mr. Croll, as a safeguard to the retailer. If we passed the combines commissioner's suggested act without being absolutely certain that Mr. Croll's suggestion will protect the retailer, then we have thrown the baby out the window with the bath water, have thrown the retailers to the wolves by this unfair Act, thrown them open to unfair competition at the hands of the big departmental and chain stores. I am of the opinion that, unfortunately, we have not allowed ourselves to obtain evidence either on the question of the merits or demerits of price maintenance, on the one hand, or evidence sufficient to enable us to form a sound conclusion as to how, or even whether, we can control and eliminate loss-leaders if we throw out price maintenance, on the other hand. That is my concern. We have not allowed ourselves to go far enough into the question with the help of practical retailers and merchants and statisticians, and with the help of experts in legislation, so that we can safely say that we know that if we throw out price maintenance we can also eliminate loss-leaders, by legislation. I am not in a position to satisfy myself on that point, and therefore it is extremely difficult to make up my mind on Mr. Croll's proposal.

I believe the conclusions the committee should arrive at are along the lines of a motion which I propose at the proper time to move, in the following terms:

- (1) Your Committee was appointed to consider the MacQuarrie Committee's report on resale price maintenance and appropriate amendments to the Combines Act based thereon;
- (2) it became evident early in our proceedings that not sufficient time was available to enable the Committee to call all the witnesses and study all the evidence it would be necessary to hear and study in order to arrive at a sound conclusion on these matters;
- (3) your Committee, having been much impressed by the very real concern felt by retail merchants over the danger to them from



unfair competition and "loss-leadering" practices by powerful chain and departmental stores if price maintenance is eliminated, is of the opinion that if any legislation is ever to be enacted against the one type of practice it must be accompanied by complementary legislation against the other;

- (4) your Committee has been unable, in the time at its disposal, to study and work out legislation which it can confidently recommend as being constitutional and effective to meet the danger of "loss-leadering";
- (5) your Committee therefore reports that it is not in possession of sufficient evidence on which to base legislation and recommends that further careful consideration be given to this whole subject, and particularly to the question of Fair Trade Laws along the lines of those in force in the United States of America, as a proper and workable solution of the problem.

The CHAIRMAN: Thank you, Mr. Fulton. Senator Horner.

Hon. Mr. HORNER: I am interested in the preliminary canter that Mr. Croll took before discussing his resolution, in which he made some remarks as to the policies of the Liberal party, and because of the very large number of my group here I think we should be allowed to reply.

The CHAIRMAN: You have five minutes, Senator Horner.

Hon. Mr. HORNER: My understanding of their principles, and it is evident in this endeavour, if they continue to press for the abolition of price maintenance, they are looking to the large centres where the large vote is congregated, and they can afford to ignore all the rest—that has been their chief principle as far as I know, the securing of votes, and that is being done by supporting the stand of the seven huge stores that are serving the people in the very large centres. What Canada is suffering from is not sufficient people living in the outlying districts. Now, as far as the resolution is concerned, I believe it is impossible. I certainly think that we do not have enough time at our disposal to bring in any resolution which will be workable or possible of enforcing with regard to loss-leaders, and, as everyone knows, a law not properly enforced and ignored breeds disrespect for all laws. You would have to have an army of snoopers; it would be impossible to enforce, in my opinion. I do not believe there is sufficient evidence before this committee. The customers of the small man at the crossroads are worthy of every consideration, and whether he buys a Frigidaire, or whatever it is, he ought to have the privilege of seeing what he is buying, but it would be just impossible for a retailer in a country village to stock them without a price maintenance commission, and he is there to service the article for the local purchaser. So I agree with the resolution moved by Mr. Fulton.

The CHAIRMAN: Mr. Fulton has not moved a motion.

Mr. FULTON: It will be moved.

The CHAIRMAN: Mr. Stuart, your five minutes now.

Mr. STUART: Mr. Chairman, my remarks will be brief. I think the big problem we have here under discussion is to get a clear definition of a loss-leader. That has been said many, many times and I just want to repeat it. I listened to the evidence here of every witness that came before this committee, and, I am just as far away from a definition of loss leader as I was when the committee was set up. Speaking frankly, my own personal opinion would be that if we discussed this for another month or six weeks we would still be in the dark as far as defining loss leader is concerned.

There is one thing that came to my mind when discussing this problem and it is the practice mentioned on many occasions of the Rexall drug store



1-cent sale. So far as I know, rather than doing a lot of expensive advertising over the radio and through the press, the Rexall drug stores take two or three or four days, or whatever it may be, and they offer to the public two articles for the price of one plus 1 cent. I am doubtful if, at the end of the year, they have spent any more in that way than the other drug manufacturers have spent in their advertising.

Now, if you get into a definition of loss leader are you going to prohibit the Rexall drug stores from carrying on that type of advertising within their own business? To me it is a problem, and, if you studied it for weeks and weeks, you would still wonder what a loss leader might be. Speaking quite frankly, I say that we have not a better definition now than when the committee was set up.

Another thing that came to my mind was the incident that occurred in London Ontario. There was a gas war up there and they were all trying to undersell each other at gasoline stations. One operator got the idea that he was going to offer a package of cigarettes with each ten gallon purchase. That was done, but immediately the jobber or the manufacturer of those cigarettes said: We are not going to supply you with any more tobacco. Whether that is a loss leader or not, I am still in the dark. Just where can you draw the line, and where can you define "loss leader"? I am doubtful if it can be done in months of sittings of this committee.

I have one other statement and I will be through. A loss leader I believe, under certain circumstances such as prevailed through the 1930's, would be a very, very serious problem. If we had an enormous quantity of goods with very little money to purchase those goods, I would be fearful of loss leaders and competition becoming so keen that it might be very harmful to the small dealer.

Under present conditions, with the defence program of this North American continent which we feel will continue for another two, three, four, five years or longer, I believe we have little worry for the next two or three years. However, it might be well if perhaps we waited to see just what effect this legislation will have if it is adopted in the House of Commons. Then, we might be able to come to a better decision later on—to define what a loss leader is and put legislation through to take care of it.

I thank you.

The CHAIRMAN: Mr. Shaw.

MR. SHAW: Mr. Chairman, you know Mr. Croll in introducing his resolution and speaking on it made specific reference to resale price maintenance and its abolition. I do not intend to do that.

I doubt very much if the resolution Mr. Croll has put forward gives that leeway, although I assume it is predicated upon the assumption that resale price maintenance will be abolished.

MR. CROLL: It has to be.

MR. SHAW: Mr. Croll used an expression which I shall refer to—he referred to the fact that traditionally business is operated on free enterprise. I sometimes wish that people would stop using that expression because there is no such animal, and there probably never will be. I think he means private enterprise.

I am bothered, as are others, with the definition of a loss leader. All those who have presented evidence before us gave their views. Mr. Croll has indicated that any sale at less than a 5 per cent mark-up on cost would be a loss leader. If I were permitted to question the sponsor of the resolution I would ask him to present evidence which motivated him in his thinking when he came to the decision that anything less than a 5 per cent mark-up on cost was a loss leader.

I am concerned about loss leaders and I think, through the practice of loss leaders, big business is certainly able to make it extremely difficult, if not impossible for the smaller and weaker businesses to carry on.

Certainly the provincial governments have been concerned about this matter more than about resale price maintenance. I am informed of the fact that British Columbia and my own province of Alberta with which I am more familiar, have passed legislation on loss leaders and they used the 5 per cent mark-up on cost, although I do not know why.

I have no knowledge of any case ever having been dealt with under that legislation, and I do not know why. I understand, however, it is because of the impossibility of securing a conviction—but that is only my opinion.

I think, whether we abolish resale price maintenance or not, the time has come for us to deal with the loss leader. However, I say, as Mr. Stuart said, that first I want to know definitely what it is that we are going to undertake to legislate against.

Before making a final decision on Mr. Croll's resolution I think we have to know exactly why Mr. Croll came to the conclusion that any mark-up of less than 5 per cent on cost is a loss leader.

As I say, Mr. Chairman, I am not passing any comments on resale price maintenance at this particular moment, and I am dealing with the resolution.

I wonder too, Mr. Chairman, with the provisos in his resolution, provisos under which loss leading can be practised in effect, whether we can pass legislation that is completely enforceable. I certainly agree with those who feel that if there is any doubt in our minds as to the enforceability of any piece of legislation then it would be better to stay clear of it.

Let us define "loss leader". Let us find whether Mr. Croll's definition is correct and, if we are going to deal with his resolution we can proceed knowing whether a loss leader is represented by a reduction to less than 5 per cent on cost.

That is all I have to say.

The CHAIRMAN: Mr. Harrison.

Mr. HARRISON: I think Mr. Croll has certainly made a contribution to the discussion we have had in this committee, and I have no doubt but what he has made a contribution to the country as a whole. I think he said that he did not want us to throw any stones at the patrician motion that he make—it was something to use as a basis for expansion.

Mr. CROLL: For discussion.

Mr. HARRISON: It is a proposition for discussion until we can find something better.

The proposition of defining a loss leader is something that is going to cause us considerable worry and, when we have defined it, it is not going to be equitable in all cases. Mr. Hougham touched on the point yesterday when he said that the T. Eaton Company for example, wanted to be master of its own fate. That more or less applies to the small merchant as well.

For example, the merchants in Saskatchewan are often confronted with bad crop conditions and they have to liquidate their stocks to meet their obligations. They should not be prevented from doing so by any so-called loss leader legislation. They have invested their money freely and in a free economy, so they should be able, if they require to do so, to get it out.

We have to be pretty careful with a proposition of this kind and I doubt very much with the very difficult task we have of defining "loss leader" whether we are going to do ourselves or the merchants a great deal of good by going ahead with any loss leader legislation whatsoever. From what I have heard in this committee so far, in deference to Mr. Croll, and I realize his motives, and I think most merchants will realize he was trying to be

helpful to them and was sincere in that—and we know he was—at the same time I do not think that any so-called loss leader legislation, defining what “loss leader” is, will be equitable in all cases. So, I think I would be disposed to “throw the baby out with the bath water” as Mr. Fulton said.

Mr. CARROLL: I have very few words to say on this, Mr. Chairman. I do not think this committee is in a position to define what a loss leader is. I would suggest, if this committee wanted to pass this resolution on to the Justice Department, that there is one set of people in this country who are able to give us a proper definition of what a loss leader is. Those are the people who are administering the Act against combines.

Now, it would not be a very difficult thing for Mr. MacDonald, who has had the advantage of being in that department for years, and who has the advantage of his various predecessors and the work they have done for years. This matter of loss leaders must have been before them hundreds and hundreds of times. As far as I am concerned I would not undertake today to say what a loss leader is.

I presume that Mr. Croll is attempting to give a definition of what a loss leader is in the very first item where he says:

Be it resolved that no dealer shall sell or offer for sale, directly or indirectly, any commodity at a price less than 5 per cent above cost . . .

Now, I am presuming that is Mr. Croll's real definition of a loss leader. Anyone who sells at less than that would be selling what is known as a loss leader.

On the other hand I think I should mention the other question—number 4(c)—concealed price reductions in premiums, discounts, and other selling practices such as loss leaders.

That brings us to a place where we have got to have a further definition; somebody has got to give a further definition of what a loss leader is.

I would suggest that the only other evidence given to this committee against loss leaders, generally speaking, was by those who were opposed to the Act that we have been studying, and most of them did say that if the Act were passed or recommended by this committee there should be some legislation dealing with loss leaders. I think they were on very fair ground there.

So, Mr. Chairman, I suggest that if this committee is against loss leaders they should recommend to the proper people the task of producing legislation either now or at some future time, and in that legislation will be a definition, a general definition of what a loss leader is. I think the people who at least should be in a position to give a proper definition of loss leaders are those who are conducting the Combines legislation or looking after the Combines legislation.

I am not against loss leaders in all cases. I am against some of my own leaders who in the past were lost, or I thought were lost—and I am not talking about political leaders there—

Some Hon MEMBERS: Oh, oh.

Mr. CARROLL: I perhaps might say that Mr. Hees would not be altogether too opposed to this practice of loss leaders in deals involving other than merchandise.

That is all I have to say Mr. Chairman.

Mr. BLAIR: Mr. Chairman, I was interested in Mr. Croll's amendment in regard to loss leaders but I feel myself at a loss to define exactly what a loss leader is.

I wish to assure the committee that when I came here I did so without any



idea of obstruction in any way, and with a mind unbiased with regard to this legislation. However, certain things have turned up which disturb me very much.

We have had people here give evidence on behalf of large organizations, retailers and so on, and we have had people come in favour of this legislation. So, we should be very careful when enacting any law, in view of the representations we have had.

We have not yet had evidence to show exactly that resale maintenance is wrong in some degree, and I am concerned about some of the types of trade in which I have been interested. I was not at all impressed by Mr. McGregor's representations in regard to the pharmaceutical trade. To my mind there still comes up the matter of standardization of products—the standardization of very important medicines and drugs.

This brings me back to something raised by some of the other members and on which I would like more information. I speak of American fair trade laws and in this regard I understand they are tied up with the matter of pharmaceutical products. As I understand them, if a man makes a certain product, a named brand—for instance a shirt—he goes and presents his statistics and gets a selling price. On the following day one of his competitors may go to the board with an article practically the same, but let us say that he approaches the board and says: I am prepared to sell this at a lower price. Perhaps the first man said \$4 and the second man may say \$3.75. I like the idea of competition among high grade named products. That idea appeals to me. Again I say I am not exhibiting any obstructionist tactics, but I think it is a matter altogether too important to be rushed through, and I used the word rushed advisedly. Personally, before I give an opinion on this matter I would like to have more evidence, and certainly I am very much taken with the trade laws as they have them in the United States. I know that Mr. Croll's amendment was moved in good faith.

Mr. CROLL: Hear, hear.

Mr. BLAIR: As far as I can find out, I am opposed to this practice of loss leaders. I think the term "vicious" was used concerning it, and I think it is a bad thing for the trade. At the same time, however, I have grave doubts whether the amendment as moved by Mr. Croll is workable. You cannot bring in laws legislating against something about which you do not know. I think the committee can see that I am absolutely at a loss in this matter. Therefore, the appeal I make to the committee is: having read about the American fair trade laws I would like a further investigation of those laws. It seems to me that it does away with some of the evils we have to face.

Hon. Mr. GOLDING: Mr. Chairman, I think Mr. Croll is to be congratulated on his effort to put before this committee this resolution for their consideration. I think he has spent a good deal of time and effort in it.

However, very briefly, I feel the legislation you are intending to pass, and which I imagine you will pass, is a condemnation of price fixing, and in this resolution you have price fixing, good, bad or indifferent or anything else, and I am going to make my contribution very brief. My good friend Judge Carroll spoke to the effect that every member in this committee realizes loss-leaders, this animal, whether you can describe it or not, is a vicious animal which operates in labour circles, professional circles, manufacturing, retail and every other line, and it is something I think every member of this committee would like to correct.

Now, I am not competent and I do not think many of the members of the committee here are competent to suggest or determine what sort of legislation you would have to have to correct it. I would suggest passing a resolution

asking the government to consider the whole matter and bring in legislation if they possibly can to deal with this problem of loss leaders. I understand some provision for legislation to that effect is being considered, and my friend Mr. Shaw has referred to that. I think every member of this committee would like to see some action taken along these lines and that is a suggestion I would like to make.

Mrs. FAIRCLOUGH: I am concerned primarily with the first clause, which sets the minimum price at 5 per cent above cost, and I would like to say I cannot see how you can name any one percentage to cover all trades in this country. For instance, 5 per cent on some food products is more than they are getting at present, and if we went down to 5 per cent on jewellery or refrigerators we would have real loss-leaders. The same thing would apply when you get into clothing; there are some types of seasonal clothing that are sold for a short period and then they are put away until the following year, and there is very little change in style. On the other hand you have things like women's gowns which change with every season and at the end of the season a great many reliable stores throw them on the bargain counter. I do not know how many of you have been in Filene's store in Boston, but they have huge signs advertising goods which have been on their counter for seven days are marked down so much, and for fourteen days they are marked down so much, and if I am not mistaken when you get to six weeks they give them away. I don't know whether they actually do it or not, but that is the way they advertise and the whole principle is there is always fresh goods on their shelves.

During the war when the Wartime Prices and Trade Board was operating they had the task of deciding what should be the selling price of practically everything that was sold in the country, and in their deliberations they were assisted by advisory boards of the trades concerned. They did not always take the advice of these boards but nevertheless each department had the advice of experts in the field in which they had jurisdiction and prominent members of the trades from coast to coast were encouraged to submit their representations to the administrator concerned. They were heard and matters which were entirely foreign to the administrators were discussed and taken into consideration in the formulation of policy. There were two features of mark-ups used by the Wartime Prices and Trade Board, there was the percentage mark-up, and there came into effect a little later on what was known as the dollars and cents mark-up, which was vigorously protested against by several sections of the trade because it didn't take into consideration at all the amount of the investment that the dealer or distributor had in his products.

To come back to this 5 per cent, I would like to say there is one commodity in the food field which cannot be termed particularly as perishable, yet it is a commodity which is used as much if not more than any other in the home, and I refer specifically to sugar. Now, this resolution provides for 5 per cent above cost, and most of the witnesses who have been here have based their percentages on selling price, which is the common practice today. If we base the mark-up on sugar between the retailer's cost and his selling price you will find that he makes 5.14 per cent mark-up if you figure the mark-up on his cost, but if you figure it on his selling price he only makes 4.88 per cent, which is under the 5 per cent, so you may say sugar is a loss-leader all the time if you are going to use this as a definition.

Now, I think there are a great many things enter into this. In some distributive trades the retailer pays freight and other costs in order to put his wares on his shelves. In other trades goods are delivered to the retailer at the cost of the distributor. All these things would have to be taken into consideration. Premiums are mentioned in this resolution, coupons are not.



I don't know whether Mr. Croll intended to include coupons when he spoke of premiums, but a premium I would say was making available an article in a different line from the article sold, while coupons entitle the purchaser to buy a second or third article in the same line at a reduced price or sometimes at no cost at all.

I am merely throwing out a few views for the consideration of this committee which I hope will point out the great difficulty we face in trying to lay down any one percentage mark-up to apply to a vast number of commodities.

Mr. CARTER: Mr. Chairman, as a rather young and inexperienced member of this committee I hesitate to express an opinion in the presence of so many distinguished parliamentarians, businessmen and lawyers, but fools rush in where angels fear to tread. I am going to venture the opinion this morning that we seem to have lost sight of the primary objective of this legislation. The primary objective of this legislation is not to combat inflation, not to reduce prices, not to lower the cost of living. We all hope it will have a beneficial influence on all these things, but as I understand it the primary objective of this legislation is to prevent combines from accomplishing through vertical arrangements, the things which in the past were accomplished by horizontal arrangements. That is the background against which we must consider the question before us now.

We are all sympathetic with the little man, whether he is a consumer or a small retailer or whether he is a small manufacturer. We are all sympathetic with the little chap and I think we are all grateful for Mr. Croll's efforts to express this sympathy in legal terms, but whether this proposal has a place in this legislation or not I am not able to say because I am not a lawyer. I do think, however, it should be considered against the background of our primary objective which is anti-combines.

The witnesses who have appeared before us have painted a very dark picture of their associates. If we are to believe most of them, the big business man, the big manufacturers of this country are ogres who are just waiting for an opportunity to pounce on the little fellow, to undercut him and short of nothing wipe him out of existence just to satisfy their own selfish impulses.

I for one find it hard to believe that the business men of this country are much different from the rest of us. If it is so I think there is great concern for the morality of the business men of this country, and then the problem before us is a moral one rather than a business or economic problem. I do not think you can find a legal answer to a moral question. If the problem is moral we must attack it on a moral plane, and although I agree with the sentiments Mr. Croll is trying to express, I think all we can do in this committee in our efforts to find a legal answer to Mr. Croll's problem is to express the opinion that we are against any such practice.

Mr. DICKEY: I think the question before us has been pretty well dealt with by other members of the committee. I want to say I support wholeheartedly the principle of Mr. Croll's motion. Mr. Carter spoke of the objective which underlies the proposal of legislation for resale price maintenance, and I think that the objective can be summed up by saying the objective would be to achieve benefit to the distributor, benefit to the consumers and over-all benefit to the community. Now, that is a laudable objective and something we should strive for, but in doing that we also should make sure we do not by curing one evil create another evil that may in the long run cancel out or become more important than the evil we have got rid of.

If there is one thing that is clear from the evidence I think it is that the retailers generally do fear the effect of wholesale price cutting, loss-leader competition and cutthroat competition may have in their businesses. I think it is also equally clear from their evidence that loss-leadering or this kind of



cutthroat competition is not a pressing problem with them and at least for the last few years they have not been injured either individually or collectively by cutthroat competition in the segments of their businesses which come under the present arrangements of price maintenance. In a very considerable number of segments of their businesses they are free from that particular practice. If legislation is passed which would remove from the Canadian economy in an effective way the present system of price maintenance in so far as it is now practised, I think we have to consider whether or not that will change materially the situation with regard to loss-leadering or price cutting because the theory of getting rid of price maintenance as I understand it is to re-establish competition in price. Retailers are afraid of price setting because of the damage it would do to themselves, and also because they believe that an unreasonable amount of price cutting would have the effect of destroying competition which now exists in the retail trade and the end result might not be very different. Therefore we have to consider what we can do not only to protect the retailer in the new situation but also assure the retailer there is no intention of throwing him to the wolves or selling him down the river, and we do not have any intention of trying to damage him.

Now, I have been worried about this thing, and I looked with great care at the present legislation in the Criminal Code, which is section 498(a) and has been referred to in some of the briefs. That section is quite a long section, but the thing that interested me on the question of resale price maintenance is this, and the section starts out:

Every person engaged in trade, commerce or industry is guilty of an indictable offence—

And it goes on to refer to the penalties.

—who engages in the policy of selling goods at prices unreasonably low for the purpose of destroying competition or eliminating a competitor.

Now, it seems to me it is obvious from what was said by other members of the committee that we perhaps are going to have to define loss-leaders in general terms, and we will have to consider whether this definition which is in the existing law may be as good a general expression of what we want to achieve as we can devise and perhaps what will be required will be more application of the present laws to situations which may arise in the future which, on the evidence we have had before us, has not been a problem for the last ten or fifteen years or more.

Mr. FULTON: How pleasant it is to hear Mr. Dickey praise a piece of legislation enacted by the Bennett government.

The CHAIRMAN: Splendid, Mr. Fulton. No doubt you will also endorse it. Are there any other members who want to speak on this?

Mr. CROLL: Do I get a few minutes in rebuttal?

The CHAIRMAN: Nobody else has had.

Mr. HEES: Give him a chance.

The CHAIRMAN: He does not want a chance. Now, at this point I want to refer to standing order No. 63, citation 552 of the rules of the House of Commons:

Strangers are permitted to be present during the sittings of a Committee of the Commons, but they may be excluded at any time, and are to withdraw when the committee is discussing a particular point of order, or deliberating on its report.

The time has now come for us to deliberate on our report, so we will take a minute's recess while the strangers withdraw.

The committee will now sit in camera to consider its report.

## APPENDIX A

BRIEF

Of The

NATIONAL COUNCIL OF WOMEN  
of Canada

To

THE JOINT COMMITTEE

Of

THE SENATE AND THE HOUSE OF COMMONS

On

COMBINES LEGISLATION

JOINT CHAIRMAN

MR. JAMES SINCLAIR, M.P.

HON. SENATOR A. L. BEAUBIEN

November 24, 1951

This brief is presented on behalf of The National Council of Women of Canada which represents 23 nationally organized societies and 51 local councils spread across Canada with an overall membership of 600,000. The interest of National Council in the problem of resale price maintenance is not new. Council has concerned itself with this matter for many years. In 1948 it presented jointly with the CAC a brief to the Curtis Commission on Prices and in 1950 it endorsed the brief of Canadian Association of Consumers to the MacQuarrie committee. In both these briefs opposition to the practice of resale price maintenance was vigorously expressed.

Now, once again, council wishes to make clear that it is against the system of resale price maintenance because resale price maintenance is *not* in accord with our free enterprise system.

After careful study of all reports, and the reasons advanced in support of resale price maintenance by manufacturers, wholesalers and retailers, council feels strongly that resale price maintenance does *not* safeguard our free economy and does *not* increase economic efficiency but, rather, restricts competition by private agreement and tends to *discourage* economic efficiency.

Council would like, for the sake of emphasis, to summarize the chief arguments of Mr. MacQuarrie's report with which it finds itself in full agreement.

I. Resale price maintenance affects competition on two levels:

(1) Retail level—it eliminates competition. It permits retailers to agree separately with the manufacturer to sell his article at a fixed price. While it is illegal for dealers to make a price fixing agreement among themselves, this system of separate agreement has the same result and is, in our opinion, a perfect substitute for a cartel device.

(2) On the manufacturing level it tends to eliminate competition. Where several large firms dominate an industry a gentleman's agreement on prices, constitutes an unofficial but very effective combine, which cannot be broken by law.

- II Resale price maintenance retards economic efficiency because—it produces an unsatisfactory price structure. It replaces free competition with an artificial arbitrary system. The manufacturer with no knowledge of the retailer's cost, and no financial investment in his business, maintains control over his operations.
- III It discourages that efficiency in distribution which would result in lower prices, and is therefore incompatible with consumer interests.
- IV The right to influence retail prices and business methods should be the prerogative of the consumer, *not* the manufacturer. It is not in the best interests of Canada or efficient business that *inefficiency* at any level should be subsidized by the consumer.

The Council concludes, as did the Report of the Royal Commission on Prices, and the Interim Report of the Special Committee to study the Combines Investigation Act, that the consumer should be completely *free to choose*, not only the product and type of service she wants but also that she should pay a price which is related to the cost of the product and of the service she buys.

### *Free Enterprise Competitive System*

The National Council of Women decided to discuss further the impact of the Resale Price Maintenance system on the principles of our supposedly free economy by showing how the restrictions of this system violate the freedoms that the consumer should enjoy, i.e.

1. Freedom of choice—to choose between the same article with different prices.

2. Freedom to bargain.

and the freedom of the retailer to compete with prices and services against another retailer. With Resale Price Maintenance there is no freedom of choice for either party.

There are three ways in which controls may be applied:

1. By direct government control which is imposed by the elected representatives of the people in their interests, i.e.

- (a) Fixing freight and rail rates for railroads, establishing telephone rates.

- (b) Provincial Boards to set price of milk.

- (c) Emergency Controls, i.e. fixing maximum prices during a war.

2. The Control of retail prices by the Manufacturer. This practice or Resale Price Maintenance, as it is called, is the control *by* the manufacturer, in the interests of the manufacturer and the retailer without regard to the interests of the consumer.

The manufacturer even could set himself up as a lawmaker and take upon himself the right to punish the merchant who does not conform to the manufacturers' rules and regulations. He could do this by refusing to supply the dealer with the products he has ordered. In England the report of the Lloyd Jacob Committee said as follows: quote. "The proprietary articles Trade Association, which affected to a great degree the chemists and pharmacists of the country, has great power. If any attempt is made by the chemist to sell any article below the list price the whole 2,000 articles would be stopped. The association could fine chemists £25 for the first offence, £50 for the second." end quote. Such high handed practice by an association is assuming powers belonging only to criminal courts.



3. The competitive control of prices presently supported by the law of this country,

If the practice of Resale Price Maintenance is allowed to continue it is in violation of this law because it puts limits on the free competition of prices by setting the same price on an article whether it is sold next door to the manufacturer or 2,000 miles away—whether it is sold in a beautifully carpeted store with escalators, delivered by a livried chauffeur and charged to a monthly account, or sold in a wooden floored country store and carried home in a shopping bag by the purchaser herself.

The consumer wishes to preserve the right to choose between price and price-plus-cost-of-service.

*Weight of Advertising*—Resale price maintenance eliminates competition in prices and stimulates competition in advertising. Advertising adds to costs and increases prices.

*Small Merchant*—One of the chief defences for the resale price maintenance system is to the effect that it protects the small merchant. He can then exist even in competition with the growth of the chain store system. Our reply is that if only 5 per cent of his merchandise is covered then he has very little protection and is meeting competition on 95 per cent of his trade. If on the other hand he is protected to the extent of 30 per cent or more, then in the interest of free enterprise he has too much protection and greater competition would be beneficial to the consumer.

*Loss Leaders*—While Council agrees with the McQuarry Report in its statement "that the loss leader device is a monopolistic practice which does not promote general welfare, and therefore considers that it is not compatible with public interest." Council does not agree with the committee when it says "the committee does not think it imperative to make an immediate and hasty recommendation regarding that practice." Council believes that competition in free enterprise is a healthy state but it ought not to further loss leading. In other words, what legislation is enacted, ought to specifically penalize loss leading. Loss leading not only causes price wars and puts business on a false basis, but is vicious to the manufacturer and (in the end to his employees) and ought to be legislated against. It also leads to insecurity on the part of the buying public. Perhaps this should be done in the same manner as combines investigation or as otherwise thought out but this must be dealt with. Any legislation that is connected on this subject must also have the full support and co-operation of the manufacturer and if he knows that his product will not be used as a loss leader, he will be less hostile to it.

It would be suicidal to our system of free enterprise if we did not support the proposed legislation to ban this system of resale price maintenance. If there is no ban on this practice what is to prevent resale price maintenance controlling 100 per cent of the merchandising of the country?

We would then have the manufacturer in control of all our merchandising, regulating its sale to suit his own self interest, penalizing the recalcitrant merchant, forbidding his freedom to bargain—in short a ruler in his own field.

Business is demanding freedom from controls by government but at this present time is fighting to reserve the right to impose its own type of control. In the case of the government, the people can turn the party out of power when controls become too oppressive. But the people have no power against the dictates of the manufacturer through the dealer.

The countries of this continent functioning under the free enterprise system of open competition in prices are the envy of the world. Let us retain this freedom.

Respectfully submitted.

Chairman of Economics,

Mrs. T. D. Clark Hamilton.

and

Chairman of Laws,

Mrs. F. E. Underhill.

Solicitor, (Hon.) NCW

Mrs. A. H. Lieff.

Enid Turner Bone,

(Mrs. A. Turner Bone),

President,

National Council of Women.

#### APPENDIX B

To: The Parliamentary Committee  
on Resale Price Maintenance,  
Ottawa, Canada.

##### *Re: Resale Price Maintenance Legislation*

1. The Great Western Garment Company Limited (hereinafter called "the Company") begs leave to record before the Committee its opposition to the proposed amendment to the Combines Investigation Act which would make unlawful the practice of fixed retail prices imposed by manufacturers.

2. The Company carries on business at Edmonton, Alberta, as a manufacturer of work clothing. It is the largest of its kind in Canada, and its products are distributed throughout the whole country. All its products are now, and have for many years past, been sold under brand names. In most cases the garment is marked in the factory with the retail sale price. This policy was adopted about 1935, and in the opinion of officials of the Company has resulted in mutual benefits to consumer and retailer.

To implement the proposed legislation would in the opinion of the Company's officials, and in the opinion of many realiers, as will be shown, be detrimental to the best interests of consumer, retailer and manufacturer alike.

3. To eliminate fixed retail prices, that is, retail prices established and maintained by the manufacturer or distributor, would throw merchandising methods back by 50 or 60 years, and would destroy standards of value now available to consumers.

Over a long period of time many manufacturers have realized that their own best interests are served by placing in the hands of the consumer merchandise of good quality at moderate prices fixed in relation to the retailer's risk in merchandising the items in question. Years ago many merchants followed the policy of a high, uniform fixed mark-up on all goods including less hazardous goods. In the result, the larger profit on such less hazardous goods enabled them to indulge in experiments in merchandising, and enabled them to handle more perishable goods, the loss on which would be borne by the profits on staple goods coming within the classification of necessities of life.

It is not possible for the average person to determine the true value of goods. He has no standard of comparison. It has been demonstrated by the history of past years that manufacturers and retailers render the highest service to the community by providing the consumer with good merchandise at a modest profit for each, and that in selling on the price fixed principle the consumer does have a standard of comparison.

It is within living memory that retailers did not mark the price on their goods in plain figures and that the consumer had to bargain if he were not willing to accept the quoted price as fair value. Brands were not known because the manufacture of work garments had just recently been taken out of the homes and placed in factories. In those days goods of uniformly high quality were extremely hard to find. Some manufacturers and retailers, however, realized that the consumer was entitled to goods that would give him the maximum possible service, and they refused to make or sell goods of inferior quality for the purpose only of profit without adequate consideration for the interests of the consumer. As a result, the method of dealing in branded merchandise arose and gained great popularity because the purchasers could thereby be assured of a uniform standard of quality at a fair price.

It is well known, and the point is evidenced by the report of the Commission, that an attack was made on this policy in the form of "loss leaders".

Consumers knowing the quality of the branded goods learned to wait for these "loss leader" sales to acquire their needs, and hence it became unsafe for the small merchant to carry the branded goods for fear of this "loss leader" practice. The natural result was a decline in the sale of branded goods, many of which disappeared from the market.

It seemed to this Company, and to many other manufacturers, to be highly important that work clothing and other staples should be accessible to the consumer at his local store. At the same time it was realized that this was not possible if the consumer could count on waiting for "loss leader" sales and acquire the merchandise at prices considerably below the fair prices prevailing at his local store.

Consequently many manufacturers of branded goods, including this company, marked the price to the consumer on the goods and policed this price. The price was fixed allowing to the retailer a profit commensurate with the risk involved in handling the line. The retailer was not allowed to sell at a price greater or less than the fixed price.

The prices fixed by this company were, and are still, lower than the prices charged by manufacturers of the same kind of goods without price fixing, and in the result this company's goods have increased in popularity enormously in recent years. It will be shown in evidence before the committee that the policy of this company has resulted in holding the price of work clothing both that manufactured by the company under their brand names, and others, to a lower level of prices to the consumer than would prevail today if the price fixing policy were not in effect.

It need scarcely be said that the interest of the manufacturer is to sell as much of his goods as possible, of a quality as high as possible, at a reasonable price, and by that method earn the goodwill of the public. Incidentally this method of merchandising places in the hands of the consumer a standard of value and a standard of comparison which could not possibly be available to him otherwise.

This company's policy is to provide goods to Canadian consumers of the best quality to be had anywhere in or out of Canada, and by fixing fair retail prices to see that these goods are delivered to the consumer at fair and reasonable prices, uniform throughout Canada, and provide to the retailer a mark-up



sufficient only to take care of his cost of doing business and a reasonable profit. To make big money he has to increase his volume. He cannot increase his profits by increasing prices.

In educating the company's retailers to this philosophy of doing business, that is, high quality merchandise at the lowest price possible, and thereby gaining consumer's patronage, the company in 1936 issued a portfolio to which reference will be made, describing this method of doing business. This portfolio was placed in the hands of the company's salesmen, who in turn discussed it with their retailers. Photostatic copies of it are supplied because it indicates very clearly the origin and reasons behind this company's policy.

The only resistance shown to this philosophy of merchandising from retailers has been that a limited number of them oppose the principle of the limited mark-up price on the garment, and even today there are certain merchants who buy the company's goods only because the consumers insist upon having the brand.

The company has experienced efforts on the part of retailers to discourage the sale of its brands and promote the retailer's own individual brands, or other brands on which the price is not fixed and on which the mark-up is substantially higher.

There is no overall in North America today made of cloth which is the equal to that which the company uses. Competitors however whose prices are not fixed charge approximately the same price for overalls of a demonstratively inferior quality, and up to \$1.00 per pair more for goods made of still inferior cloth although of greater merit than those just referred to.

The National Garment Manufacturers Association of Canada is an organization of something over 100 members most of whom manufacture work clothing. There are also other manufacturers of work clothing not members of the Association. These manufacturers both in and out of the Association, with very few exceptions, sell their goods without any restriction on prices.

It is submitted that if the company's price fixing policy were detrimental to the consumers it could not happen as is the fact that more Canadians demand and wear the company's brand of work clothing than any other brand in Canada.

The public has the choice between buying work clothing upon which the price is not fixed, and buying that of this company and others who do fix prices. It can be demonstrated that the work clothing of this company is the most popular in Canada, which indicates approval by the consumers of methods that have been followed by this company.

The report of the Commission recognized that "loss leaders" which is one of the greatest dangers seen as the result of the enactment of the proposed legislation tend to monopoly, but there is nothing in the report to indicate what the other ways referred to are of correcting the "loss leaders" evil.

That the methods of doing business followed by this Company meets with general approval of the retailer is demonstrated by the fact that no less than 688 of them throughout Canada have signed the following letter viz:

November 6, 1951

Hon. S. Garson, K.C., M.P.,  
Minister of Justice,  
Ottawa.

The undersigned, all being independent retail merchants, selling clothing manufactured by The Great Western Garment Company Limited of Edmonton for the working man and carrying on business at the addresses indicated opposite our signatures, hereby make the following

representations with regard to the proposed legislation leading to the elimination or discontinuance of the practice of the fixing of resale prices by the manufacturer, commonly known as Resale Price Maintenance.

1. Resale Price Maintenance under the plan of The Great Western Garment Company Limited protects the working man. It gives him a top quality product at minimum cost. In name merchandise such as this, the working man is assured of getting what he pays for. Under this plan, and for this company's blue denim bib-overalls, we as retailers receive 21.4 cents of the sales dollar, which is the lowest profit on which we can exist, and is much lower than the profit on articles where the manufacturer does not fix the price.

2. Resale Price Maintenance by individual manufacturers who have the welfare of the consumer in mind stops the "loss leader" practice, with which we cannot compete with this small markup. "Loss Leaders" tend to destroy the brand and the consumer thereby loses his standard of comparative values.

3. The retail merchant has a place in the Canadian economy. Our business is based on personal initiative and personal contact with the consumer and it is important in the interest of the public that our services should be maintained on a fair and reasonable basis.

The foregoing is respectfully submitted.

THE GREAT WESTERN GARMENT COMPANY LIMITED

C. D. JACOX

*President.*

### APPENDIX C

Mr. Chairman, Members of the House Committee on  
Resale Price Maintenance.

I am presenting this brief on behalf of the Retail Merchants' Association of Saskatchewan which association wishes to oppose the proposed government legislation to outlaw resale price maintenance. A great deal has been said to becloud the issues, which we believe should be clearly defined. Firstly whether the legislation is actually anti-inflationary, as has been given as the government reason for its proposal and secondly whether the conclusions that the MacQuarrie Commission has presented in their interim report on resale price maintenance are actually sound and valid in their application to the proposed legislation. We should like to emphasize that the MacQuarrie Commission was a commission to study present legislation on combines and to make recommendations in order to make our Combines Investigation Act a more effective instrument for the encouraging and safeguarding of our free economy. It was not and never has been a commission to study causes of or to make recommendations for the remedy of inflation. We point this out in order to demonstrate that the MacQuarrie Commission did not recommend the outlawing of resale price maintenance in order to contain inflation or in order to produce anti-inflationary legislation, which points to a grave inconsistency in the reasons which the government has advanced as the purposes of this legislation.

The Speech from the Throne made references that this was the only anti-inflationary legislation which the government was proposing. It would automatically follow that the government considers resale price maintenance inflationary. But again I should like to emphasize that conclusions should



not be drawn from findings of the MacQuarrie Commission to substantiate this reasoning because the MacQuarrie Commission was not investigating inflation. Indeed resale price maintenance has not been established as inflationary and it would tax the ingenuity of those most opposed to the practice to establish in any way that it has been inflationary. The fact is, gentlemen, that products sold under price maintenance have risen less in price than those products which have not been traded under the practice of resale price maintenance, and of course, by comparison they have risen much less than the cost of living index. The committee would be wise to verify this information as they see fit.

I am quoting now from *Hansard*, Tuesday, October 9, 1951, dealing with the Speech from the Throne. The Prime Minister stated "The concern of our people over the rising cost of living resulting from international and domestic inflationary pressures is fully shared by the Government. Every measure will be taken which my Ministers believe will be effective in counteracting inflation without impairing of free institutions.

"The anti-inflationary measures already enforced have checked the upper trend of prices of goods in services affected by their operation.

"The government has received an interim report from the committee studying the Combines legislation recommending that such suppliers of goods should be prohibited from requiring or inducing distributors to re-sell such goods at fixed or minimum resale prices. You will be asked to consider legislation arising out of the committee's interim report".

On Monday, October 15, and I am quoting from *Hansard*, the Prime Minister stated, referring to resale price maintenance, "It is certainly a problem which is being considered by those who are really concerned with such measures as can be effective in curbing the high prices consumers have to pay for the goods they require."

On page 41 of this issue of *Hansard*, I quote the Prime Minister: "As regards immediate additional measures to curb inflation, while others may develop, the only one which we are prepared to submit at this time is the one that will arise out of this report of the combines committee with respect to retail prices. I do not think it is going to have a very substantial effect on the index of the cost of living". Page 42, referring to the methods of distribution, the Prime Minister stated "they are costly today".

Gentlemen, I submit that if they were not costly there would be something wrong. Expansion to service to consumers is costly, building is costly, rents are costly, labour is costly, manufacturing is costly, and the taxpayers will inform you that government is costly. Surely you do not expect cheap distribution of retail products.

These quotations, gentlemen, which you can read for yourselves, should clearly establish that in the government mind the purpose of this legislation is to curb inflation. We submit that if it cannot be established, that resale price maintenance has been inflationary, then the government's very reason for the legislation is not logical.

The Prime Minister has made a statement, as quoted, to the effect that he did not believe there would be much change in price level as a result of legislation and the brief of the Canadian Congress of Labour has also pointed out that they think the effect on the price levels of retail products by the legislation would be very slight indeed. If the government does not believe that the outlawing of this practice would be anti-inflationary, then it is difficult to see how the proposed legislation can be termed anti-inflationary. We hope that this Committee will see fit to have prepared an index of resale price maintained products. It will be found that it has not risen as much as the index of the cost of living or of non price maintained products. We



also hope this committee will verify our contention of the startling fact that the mark-ups allowed by manufacturers to retailers under resale price maintenance are lower than the mark-ups allowed by the government during the wartime, which was an emergency period, and at which time the government controlled the economy of Canada by means of the Wartime Prices and Trade Board. It is difficult to see how anyone could infer that retailers' mark-ups are too high when they are not as high as those allowed by the government during an emergency period.

Now Gentlemen, the chairman has stated that this committee is not concerned with mark-ups but rather as to whether the consumer might not purchase the product cheaper. We would be very foolish to try to demonstrate that certain products, likely Nationally advertised brands, might not sell at a reduced price level; your knowledge of the loss leader type of competition should clearly establish depending upon the competitive situation in any particular area some products will be cheaper to the consumer.

I should like to quote to you from the report of the Royal Commission on price spreads of 1949. This report was presented by the chairman, Mr. C. A. Curtis, on March 8th, 1949. In the section on the Examination of Mark-ups the report stated and I quote, "Behind all this, the crux of the matter is how much the profits of the distributive trade did or could effect prices. The fact of the matter is that the cost of the merchandise and the operating expenses of the merchant make up the big proportion of the price in the majority of cases, and that if all profits were eliminated the saving in price to the consumer would be slight." Referring to resale price maintenance this commission reported that they had not found the practice to be "a major factor in the recent rises in price".

We submit, gentlemen, that if the findings of the Royal Commission on prices were valid then resale price maintenance has not been, as the government inferred in the House, inflationary.

This being the case, and if the committee is prepared to recognize the business principle that it is not feasible to sell anything unprofitably, it is a simple matter to recognize that the cumulative profit on the many items offered for sale must remain the same if the business is to remain profitable. This applies to large and small retailers alike.

We must not confuse the largeness of a retailer and his willingness to cut prices with a vital desire to serve the public interest. On the contrary, the firm that can establish through advertised price cuts, a public confidence in the general price level of that business, then it places that retailer in a very favoured position to make up his lost margin on private brands where values cannot be compared and where the maximum price maintenance to be written into the legislation has no meaning.

I would suggest that the proposed legislation will allow the long buried phrase "Caveat emptor"—"Let the buyer beware"—to once again plague the consumer.

It can not be categorically stated that a restrictive business practice conflicts with our conception, legal and moral, of business combines. For example, the manufacturer who sells his own merchandise at retail or who appoints exclusive distributors, sets up a restrictive business practice to restrict competition on his product, but a practice which is not recognized as monopolistic. We will not attempt to weaken our reason by trying to convince this committee that resale price maintenance is not a restrictive practice but it does not follow that it is monopolistic; rather it is for the protection of manufacturers, wholesalers and retailers and the consumer at large against practices which are monopolistic in tendency and which are unfair price competition not in the

interest of the Canadian economy. These practices which price maintenance prevents were the very subject of the Stevens Report by the Royal Commission on price spread in 1934, set up by the same government in which were demonstrated to be against the public interest. I am referring to such practices as the use of loss leaders which is a financial instrument and which cannot be justified by reason of operating efficiency. It is a practice designed to attract business from competitors but in fact the only competitors whose businesses are placed in jeopardy are those who cannot afford to sell at an uneconomic price which is not profitable, simply because they have not the financial resources to weather such a storm. Such legislation might have the effect of actually legislating many small merchants out of business. Those opposed to this legislation have maintained that price maintenance places an umbrella over inefficient operators at the expense of the consumer. This is simply not so; if it were, then it would follow that the so called economic efficient retailing giants should be showing returns on their investment out of line with other businesses and industries.

It is a fact that many large volume units require larger margins than the efficient small ones. Your immediate reaction will likely be to query why the small man would be hurt. The answer is simply this, that large units with large volumes acquired by means of tremendous financial investments, either in single stores or in multiple outlets, have a buying power which can induce the manufacturer to enter into deals to preserve the mark-up of these retailers; this, small retailers, efficient though they be, cannot do. In point of fact I expect that most retailers will survive because there is a tremendous investment involved which they will attempt to protect at all costs. But it will be done at the expense of good working conditions and will force either lower wages or unemployment for countless number of employees who must not exceed the hours of work as prescribed by our governments. And gentlemen, legislation which adversely affects the working conditions of this segment of labour should be carefully considered. The fact that this labour has remained unorganized should not affect its position.

It has been contended this legislation would have the effect of making the big man bigger and the small smaller, and we intend to establish in the minds of the committee why this is likely to be the case. Referring directly to the Commission's interim report, there were apparently some notable exceptions to the general support of price maintenance offered by manufacturers, wholesalers and retailers' Association. It is very significant that the very large retailers are now opposing and I think it would indicate that they expect to operate more advantageously as a result of the proposed legislation.

We intend to introduce a discussion on the consistency of the reason of those groups opposed to resale price maintenance as compared with legislation and practices which affect them.

Although we agree in principle, and recommend to your consideration the reasoning supporting price maintenance as summarized in the interim report and by prior briefs, we do not intend to take up this committee's time with a review of these presentations. As small retailers, however, we challenge the statement that department stores operate on lower unit costs; it is precisely this type of thinking which we are trying to combat. I think the committee would find that department stores actually require and get a larger margin to cover their operations. It is our contention that in a period of prolonged price cutting they maintain a margin of profit because of their financial power coupled with their volume, and not through superior efficiency of operation. This we consider to be unfair competition. The practice of presenting loss leaders is not one which can be supported by reason of sound economic or



profitable practice, but it is rather one which is introduced by retailers who can afford the luxury to attract trade from less fortunate and less financially strong competitors. The only merchants who can afford to sell merchandise unprofitably are those who are financially very powerful. If it can not be established that retail mark-ups are excessively profitable then it follows that reductions in these mark-ups are not sound business economics. We have stated that large retailers use the device of loss leaders to attract their competitor's trade. But gentlemen, trade which they really want to attract is that which can be induced to buy his other profitable products. The reason that retailers fear this practice is that a large retailer can toy with the price structure of a small percentage of his volume in one department only. But this may represent the total business of his competitor. This particularly applies to a small merchant, for example a clothier or appliance dealer, who has acquired a large volume. The retailer with unlimited financial resources would be very tempted to use his resources rather than his merchandise efficiency which has proven ineffective, to temporarily price a successful competitor out of the market. It is a difficult choice for the independent; to lower his prices and operate unprofitably, which cannot last long for him, or to see his trade stolen by financial rather than merchandising capacity. Either way, his business future is not bright.

By the time prices have readjusted to a profitable level, as they must eventually do, the damage is done. The consumer no longer benefits by lower prices, but how does Mr. Independent lure back his trade? The results, on employment and wages are obvious, but the benefits to the consumer do not compensate the public interest.

Almost without exception National Brands are used as loss leaders. The reason is obvious; the public is familiar with these values. If the large retailer had the public interest at heart he would apply the reduced profit margin to his whole line of merchandise, but no, he is most anxious not to do this!

Where there is no protection for the small independent you will find a great reluctance for new private enterprises to invest at the retail level. The risks attendant on retailing are enough without throwing oneself on the mercy of large operators. The fact that the practice is not in effect has no bearing. He cannot afford to risk building a profitable business if this device can even be held over him as a possibility, for his investment can disappear overnight even though his operations be more efficient.

The only expansion in the retail field will revert to those who are large enough to deter any such practice. For confirmation of this I refer to the retail grocery trade which generally speaking has little or no resale price maintenance. Certainly the big have become bigger and we can all readily see that it is the only segment of our retail continuity where the operators who earned only an existence, as all businesses did during the depression days, have not improved their position, even with the great business prosperity that we have experienced. Many are as efficient as the large competitors but they are literally prevented from acquiring a volume by the financial giants and the capital required to compete, simply cannot be acquired.

The observations on vertical integration in the interim report are worthy of note. The fact that price maintenance might encourage retailers to establish manufacturing of their own private brands is hardly an argument against price maintenance. Why should this be considered a bad thing? It is very notable, however, that margins of profit on private brands are almost without exception much higher than on price maintained products. It is always a nationally advertised brand that is cut since the cutting of private brands will not damage a weaker competitor's position, but rather will simply reduce the private brand



retailer's profit margin. This is the case even though producers of nationally advertised brands will often supply a similar or near enough identical product under a private brand label for a retailer to price as he wishes. Price cutting to a lower level is singularly unattractive to such retailers under these circumstances. It is inconsistent to object to price maintenance on the grounds of vertical integration. The objections to price maintenance on the grounds that it favors vertical integrations are simply not valid objections because such investment by retailers to establish private brands is a legitimate field of investment to which nobody should take exception. It is certainly not objected to by retail opposition as unfair, as it is a natural expansion by large retailers who have profit in mind. Let me throw this challenge at large retailers who would let the public believe that lower prices are in sight—if they can economically reduce prices and justify loss leaders as a sound and economic business practice, then let them reduce the price level of their private brand merchandise. Such price cutting does not directly interfere with the policies of competitors and does not unfairly force them to reduce prices to an unprofitable level. You well know that here is one saving that a consumer will never see.

One member of this Committee asked for support of the fact that private brands generally cost the consumer more in profit than nationally advertised brands. It is not hard to imagine why such private brands gain the favour of so called mass buyers. They then control a line on which there is no competition, which is the obvious place to average out profit margins.

We have prepared such a schedule which demonstrates our point. The following list shows the increased margin in well known private brands over price maintained National Brands expressed as a percentage of increase:

	<i>Per Cent</i>
Men's Overcoats .....	2·7
Children's Overalls .....	11·5
Children's Suits .....	4·7
Ladies' Hosiery .....	7·0
Woollen Blankets .....	7·2
Men's Shirts .....	10·4
Men's Sport Shirts .....	4·4
Men's Socks .....	8·4
5 Tube Radio .....	14·7
Mattress .....	3·0

We can supply many more such figures but we would prefer this committee to institute its own investigation, which would insure you of the validity of such figures.

We would like to devote a few moments to what we believe are inconsistencies in the legislative policy of the present House.

If the government really believes in free price competition, may we make a few suggestions as to how the retail price levels can be reduced. These suggestions, of course, give no more consideration to the chaotic conditions which they might create in certain segments of our economy than the proposed legislation gives to this problem in the retail industry.

We frequently feel chagrined in Western Canada when we consider the price of automobiles, refrigerators, stoves and a variety of like necessities which largely come from central Canada, in comparison with the price to the South across the International border. Is it not true that the government creates a higher minimum price than would otherwise be possible under free competition by means of tariff barriers? The theory underlying such actions of course is to protect the Canadian industry, labour and capital against

competition which cannot be met. It is certainly true that we could reduce the cost of living by abolishing such actions. The members of this committee might possibly consider this action too drastic. If so, can you satisfy yourselves that your policy is consistent as it applies to our whole economy, including retailing, since the practice of protecting local industries certainly maintains a higher resale price.

It is in the national interest that Canadian business be profitable. I need not elaborate here. However, to be in the public interest it must be competitive so as not to be profitable at the expense of the consumer. Hence our Combines Legislation. But further, it must be allowed to operate within a free Canadian economy, and it is not in the public interest always to permit competition which is not within the capacity of Canadian business, no matter how efficient, to meet; hence our tariff legislation and the government concept of fair market price to prohibit dumping. We believe it follows that small businesses should be profitable only if they are efficient, to be in the public interest, but also that it is not within the public interest to open the way to unfair competition which is simply not within their capacity to meet.

On Friday, November 23, there occurred in this Committee what the *Star-Phoenix* termed a surprise development, which was that Eaton's had classified themselves as opposed to price maintenance, and were not in accordance with the brief being presented by the Canadian Retail Federation.

Surprise? To whom?

(1) Not to the Saskatchewan Retail Merchants who have been maintaining that this legislation supports the giant retailers.

(2) Surely not to the *Star-Phoenix* whom we have repeatedly informed that this development could be expected.

(3) Perhaps to those who do not clearly understand the issues involved.

(4) Certainly not to the government who should have had reason to believe this would happen, based on information garnered for them by a Royal Commission which I will mention later.

(5) I sincerely trust that the surprise is not the reaction of yourself, Mr. Chairman, or of your Committee.

I have with me a very important document with which we hope this committee is familiar. It is the report of the Royal Commission on Price Spreads dated, and signed by Mr. W. W. Kennedy as chairman, on April 9, 1935, commonly known as the Stevens Report.

It should enlighten the members as to the probable reason for the stand which Eaton's has taken. I might say that we are happy that Eaton's has taken this stand because it brings into the open, and removes from the field of conjecture, many of the points which we are attempting to make.

The Stevens Report discusses the position of the "Mass Buyers" who by definition were few in number at that time, and by far the largest of which was Eaton's. Chapter 7, dealing with distribution in Section 6, beginning on Page 220, discusses the causes and effects of mass buying and specifically qualifies Eaton's in this category. It recognizes the tremendous power which they wield and clearly establishes that a social problem was created which was in the public interest to investigate.

I would really like to read this section and others to you, so important do we consider them, but I shall leave it for your personal perusal.

The report concludes in this section that it is almost impossible to prove such charges as are levied, but that the motive and opportunity for malpractice were clearly there.



The Brief stated that the defences offered for mass buying as defined were not convincing, to use their words.

In the same Chapter 7, under the heading "Competitive Prices in the Retail Trade", the practices which we fear the most are discussed. They are recognized and stated in this commission's report as practices against which the independent has not the capacity to compete, and also they are condemned, yes condemned, as unfair and not in the public interest. On Page 28 of the same subsection, dealing with loss leaders, the following quotations demonstrate the seriousness with which that Commission viewed the situation:—"One of the most common practices of modern merchandising is the use of leaders or loss leaders. These terms have, as yet, received no exact definition, but are understood broadly to mean merchandise featured or sold at prices easily distinguished as being less than customary prices. Such price reductions are made for the purpose of attracting customers and promoting sales, not so much of the featured articles as of other articles on which a higher profit is secured. While the term "loss leaders" may have had its inception in the use of articles which were actually sold below cost, the natural loss is seldom now-a-days experienced on most leaders. The general practice is to reduce materially the customary margin on goods used as loss leaders. For a leader to be effective it must have a wide appeal and be sufficiently standardized to permit comparison of the cut price with that already charged. Goods in common use, such as sugar and butter, meet these requirements but trademarked or branded articles may be equally effective as leaders".

Later on it states "The competitors of the store using the loss leaders are, however, the persons chiefly affected. That the deliberate use of cut prices to draw patronage away from competitors is an unfair trade practice, is quite clear. Such reductions are not prompted by any desire to serve the public by giving lower prices. One purpose is to attract customers to whom the store hopes to sell goods that are not loss leaders, at substantial profits. Another purpose is to create the illusion of lower prices on all articles. That this end is not always attained does not in any way lessen the unfairness of good practice".

"It may be argued that competitors can adopt the same tactics. Large organizations including chains and department stores do so compete. But independent retailers, unless they associate together, can not pursue the same tactics for several good reasons. The volume of trade in the average independent store is not sufficient to permit the advertising of specials. On many articles the chain stores, through purchasing in large quantities, with special discounts added to regular quantity discounts, and bonuses from the manufacturer in the form of advertising allowances, have a much wider spread than the independent store. Thus, when the chain sells below its usual mark-up, it's selling price is often below the cost price of the independent. If the latter intended to meet such prices, he would be selling his goods at an actual loss", and on the same page—"We condemn the practice of loss leaders as unfair, promoting wasteful competition and seriously affecting the income of certain classes of primary producers, but in seeking a solution for the problem through legislation remedies, we are confronted with certain difficulties".

There follows, gentlemen, a discussion of the difficulties of such legislation which it is concluded are almost insurmountable. The commission concludes this chapter on distribution and I quote—"We believe that the abuses of large scale distribution can be prevented without interfering with its legitimate developments. At the same time we feel that this development is not legitimate if it is made possible only by unfair competitive advantages at the expense of the smaller and less favoured distributors. We are not condemning mass merchandising as such".



Nor is our Retain Association condemning mass merchandising as such. We have long maintained that we can compete with mass merchandisers if they will refrain or preferably if they are prevented from instituting unfair practices which are not within our capacity to meet. We submit, gentlemen, that resale price maintenance has had the effect of restraining mass buyers from such unfair practices and which has done so, as we have attempted to demonstrate, at no cost to the public, as confirmed by the Royal Commission on Prices of 1949. And we further submit that if resale price maintenance is declared illegal, that there can be no effective legislation, confirmed by the Stevens Report, to curb these vicious unfair practices so clearly demonstrated and recognized by this commission. We think it would be of interest to this committee to discover whether the Hon. Mr. Lester B. Pearson and the Hon. James L. Ilsley, both of whom have served as Cabinet Ministers in the present government; and both of whom were members of the Royal Commission on Price Spreads, would now testify that the conclusions which they arrived at through a study of the history of many, many years of business, were only valid for a temporary period, or whether they consider these conclusions to remain valid.

Let us consider for a few moments the position of the C.A.C., that great body which does so much good work for the protection of the Consumers who compose its membership. The Consumers (God Bless them!)

Consumer wives of farmers who trade under a form of price maintenance;

Consumer wives of labourers who earn under maintained wages;

Consumer wives of industrialists whose prices are maintained high by tariff legislation, gold subsidies and the like;

Consumer wives of newspaper enterprises who maintain a rigid resale price structure for their advertisers.

We have a particularly warm spot in our hearts for these consumers and spenders, but you will, I'm sure, understand when we depart from the time worn adage that the customer is always right. They seem to be convinced that prices will be lower; we are attempting to establish that the consumer will foot the bill for prices which will average out at an unchanged level to the advantage of financially strong retailers.

In the *Star-Phoenix* of November 14th, 1951, the Canadian Association of Consumers was reported to consider the practice of resale price maintenance economically unsound and also a factor in the high cost of living. I presume, gentlemen, they are anxious that such competition as they would hope to engender will produce prices which are not the same for different retailers, and yet there was a great to-do about soap prices being temporarily less expensive in another City than they were in Saskatoon, as reported on November 13th in the *Star-Phoenix*. The soap products referred to, gentlemen, of course did not bear resale price maintenance. Has the Canadian Association of Consumers then adopted the view that they do not want one product to sell in all locations at the same price as it does under resale price maintenance but that, but on the other hand what they really want is for one product to sell in all locations at the same price? It is very difficult to reconcile this kind of logic.

Our conclusions, gentlemen, are as follows:

(1) That since the government has clearly designated that the purpose of this legislation is to check inflation and since we do not believe that this committee can establish that resale price maintenance is or ever has been inflationary, we submit that the very reasons for the government introducing such legislation are not valid. The Royal Commission on prices, 1949, established

that the elimination of profits entirely would represent only a slight saving to the consumer, and also that the practice of resale price maintenance has not been a major factor in the recent rises in prices.

(2) We submit that efficient small independent retailers can compete with large retailers and mass buyers, in the public interest, if practices which have clearly been established as against the public interest are prevented. We again refer you here to the exhaustive study of the Stevens Report to substantiate our conclusion. Much information from practices and results in the United States has been introduced to this Committee and at this point I should like to quote a statement of the late Mr. Justice Louis Brandeis of the United States Supreme Court, who was one of the most vigorous enemies of trusts and monopolies. He said "Americans should be under no illusion as to the value or effect of price cutting. It has been the most potent weapon of monopoly; a means of killing the small rival to which the great trusts have resorted most frequently. It is so simple, so effective. Far-seeing organized capital secured by this means the co-operation of the short sighted unorganized consumer to his own undoing. Thoughtless or weak, he yields to the temptation of trifling immediate gain, and, selling his birthright for a mess of pottage, becomes himself an instrument of monopolies."

The practice of loss leaders is one of the most feared by independent retailers, but the Stevens Report discusses many other practices equally bad and which we believe this committee should seriously consider.

(3) We believe that it is inconsistent to discuss free price competition only at the retail level, but rather such discussion and consideration of government measures should include consideration of such restrictive practices as tariffs which in effect create higher prices to the immediate detriment of the consumer; government subsidies for a range of productive enterprises which create higher prices; government policy of farm price support; government price on minimum maintained prices for labour through enabling legislation and countless numbers of other restrictive business practices which the government actually encourages and condones and which it does not include as monopolistic restrictive business practices. We retailers are not criticising; we simply ask the same consideration as is given other segments of our economy insofar as the definition of monopolistic practices is concerned.

(4) We submit that the divergency of opinion between large and small retailers does not weaken, but rather strengthens the validity of the arguments of small retailers that this legislation will work to the advantage of financially strong retail businesses.

(5) We submit that it is very significant that mark-ups on resale price maintained products are not as high as those allowed by the government through the Wartime Prices and Trade Board during an emergency period when our economy was controlled.

(6) We submit that it is within the means of this committee to ascertain that products bearing resale price maintenance have not risen in price as much as either the cost of living index or products not traded under resale price maintenance and

(7) We wish to go on record as supporting in principle the briefs offered here by manufacturers and wholesalers although for the purposes of attempted brevity we have not discussed the situation as it affects them and the economy at large.

This report we respectfully submit in behalf of the Retail Merchants' Association of Saskatchewan.



## APPENDIX D

## RE PRICE MAINTENANCE AGREEMENT

Brief of Bulova Watch Company Limited in support of the practice of requiring price maintenance agreements from distributors of their products.

Bulova Watch Company Limited respectfully submits for the consideration of the Minister of Justice of Canada and his colleagues the following considerations with respect to the proposed legislation to prohibit Price Maintenance Agreements.

1. The combination of two or more producers of the same or similar articles to maintain prices has for very many years been considered to be restrictive of competition and not in the public interest.
2. On the other hand, the right of the individual producer or importer of a commodity to prescribe the conditions upon which he individually will sell that particular commodity, has always been considered an inalienable right of those engaged in trade.
3. In the year 1928, an application to restrain a retailer who had entered into a price maintenance agreement from selling at prices prohibited therein, was considered by the Court of Appeal in England. Lord Hanworth, Master of the Rolls, delivering the majority judgment of the Court of Appeal, referred to a number of cases in which such agreements had been upheld, and at page 271 he says:

So far as the public is concerned, after the passages I have quoted, slight evidence—if any—is needed to justify an agreement for the maintenance of prices; and the Court regards the parties as the best judge of what is reasonable between themselves . . . If the defendant determines to sell . . . preparations, why should not the terms as to price, payment and the like, be matters to be decided between the parties.

- 3 (a). The Supreme Court of the United States has also dealt with this subject. The Press have indicated that the decision of the United States Supreme Court declared the illegality of price maintenance agreements between one producer and his customers. On the contrary, the decision of the United States Supreme Court merely states that no retailer is bound to maintain the retail price set by the individual manufacturer unless he has agreed to do so. The Miller-Tydings Act expressly legalizes retail price maintenance agreement between an individual producer and retailers.
4. The Speech from the Throne earlier refers to the right of free and uninterrupted trading. It seems contradictory, and indeed dictatorial, to say to an individual that he cannot himself impose the terms upon which he individually is prepared to sell his own product.
5. No merchant is required to purchase and carry in stock the product of Bulova Watch Company Limited; nor is any member of the public under any compulsion to buy such products. There are a great number of other articles of like merchandise which the public is at liberty to buy if it does not like the price at which Bulova products are offered to the public.
6. The primary object in requiring price maintenance is not to enable the producer or distributor to obtain an excessive profit. If the producer or distributor prices his goods off the market, he simply does not sell his product, and ultimately must go into bankruptcy.



7. The primary object of price maintenance agreements—it may not be the sole object—is to protect two things:
  - (a) the prestige of the article in public esteem; and
  - (b) to protect the small merchant.
8. Producers who have devoted the greatest consideration and have developed the greatest skills possible in the production of their commodity have a pride in maintaining the prestige of that commodity in the estimation of the public. Nothing can militate so seriously against such prestige as to have these commodities subject to bargain and slaughter and fire sales, “loss-leader” advertising, or other sensational methods of offering merchandise at temporarily reduced prices.
9. The type of sales just referred to means that the small merchant who is carrying in stock a certain quantity of high class merchandise, suddenly finds the value of his inventory and the ability to dispose of the same at a profit, undermined by vicious practices, sometimes by people who are only temporarily in his community. His confidence in his inventory position—and indeed his ability to sell his inventory, is taken away by slaughter prices.
10. It is impossible that sales of the kind described can continue for more than a very short time, because the margin of profit is not sufficient to enable a continuous operation of the kind mentioned in *any one community*. The slaughter salesman must move about from community to community, thus there is no permanent or continuous advantage to the purchasing public of any one community. Rather, the whole conditions of the trade have been upset and local merchants everywhere find the value of their inventory is lessened and their ability to conduct a steady business on a reasonable basis is greatly impaired. It cannot be to the public advantage to have the merchants’ livelihood taken away from them; and particularly is this true in regard to those whose inventory is of entirely high-priced goods.  
 The majority of retail vendors of watches give to the customers a one-year guarantee; and during that one year obligate themselves to service the watch, making any adjustments or repairs rendered necessary in ordinary use. If by reason of practices referred to in this paragraph, the retail merchant is driven out of business or is unable to continue stocking high-class watches, the customer will be deprived of the service which was otherwise open to him.
- 10 (a). After the first flurry of excitement, the cutting of prices and the consequent loss of prestige results in lesser sales by the retail merchant and consequent lesser purchases from the factory. The cost of movements, cases and accessories to the distributor is very materially affected by the quantities ordered at any one time. The lessening of demand will increase the price to the distributor and, accordingly, to the retailer and to the ultimate consumer.  
 As an example, on the morning of October 17th one retailer, who last year purchased Bulova Watches to the extent of \$80,000, called on us and stated that owing to the uncertainty of the conditions in the trade and due to the Government’s announcement, he could not place any order at all at the present time. Many other customers have written in protesting against the discontinuance of the price maintenance arrangements.

11. As evidence of the fact that price maintenance agreements have not been used to unduly enhance the price of commodities to the public, Bulova Watch Company Limited point to the fact that, notwithstanding the very great increase in the cost of watch movements, watch cases, bracelets, etc. and increased transportation costs, they have continued to offer a high-class Bulova Watch to the public at the price of \$29.75 including attachment.

Prior to the imposition of the 25 per cent Excise Tax and the increase of Sales Tax, this watch sold to the public at \$24.75. Had the whole of the Excise Tax and of the 2 per cent increase in Sales Tax, namely 27 per cent been added to the price to the consumer, that price would have been \$31.43. In addition, all costs have gone up very materially. Nevertheless, by giving large orders to the manufacturers, and by the distributor, the salesman and the retailer each taking a reduction in his profit or commission, the price has been held at \$29.75. Thus Bulova Watch Company Limited has, at a sacrifice to all concerned, brought high class watches within the range of all customers. Without a price maintenance agreement many dealers will materially increase the price of this watch to the ultimate buyer.

- 11 (a). These submissions in favour of price maintenance agreements are not by any means exhaustive. We adopt the arguments in favour of these agreements which have been summarized in the Interim Report of the MacQuarrie Commission.
12. The conclusions of the MacQuarrie Commission adverse to the continued legality of price maintenance agreements is based on one fundamental error, namely, that they stifle competition. This could only be true if the commodity in question was produced by only one producer; but where there are numbers of producers and importers, it is almost foolish to suggest that there is any stifling of competition in one producer or importer saying that his particular commodity must be sold on his terms.

No one is compelled to buy a Bulova Watch; and the prospective buyer has literally scores of alternative makes from which he may buy. Every argument in the MacQuarrie Interim Report adverse to price maintenance is based on that fundamental misconception and loses its validity when it is realized that the purchaser has numberless alternatives before him.

13. The argument on page 17 of the Report, based on the suggested inequity of charging the same price for the same commodity whether sold in a store paying high rent or sold in a store paying low rent, has no validity. A high rent is paid because of the great volume of traffic in that neighborhood and the consequent very greatly increased prospect of many sales. A low rent is charged for exactly the contrary reason, that because of the lack of density of traffic there will be relatively few sales. The small merchant in the outlying area paying a small rent is himself much more insistent upon the price maintenance of nationally advertised goods than is the merchant in the centre.
14. The MacQuarrie Commission do not give sufficient weight to the fact that price maintenance agreements place a ceiling above as well as a floor below prices. In the illustration given of the \$29.75 watch, there is no question but that for the price maintenance agreement many retailers would offer this watch at a very much higher price.

15. The suggestion also that prices are fixed by producers who do not know the details of the retailers' business, is without any foundation. It is perhaps safe to say that very, very few retailers study the conditions affecting the sale and distribution of nationally advertised goods as minutely and efficiently as do the producers or distributors of such goods. Almost all such producers or distributors furnish many aids to publicity and sale to the retailers and constantly co-operating with the retailers to increase the efficiency of the means of distribution at the retail end.
16. It is equally unfounded to suggest that the producer or distributor has an interest in maintaining the retail price of his commodity at an artificially high level. The great secret of success in selling is to dispose of sufficient numbers at modest prices to distribute the inevitable overhead over as many units as possible.

The cost to the producer and prices to the distributor are based upon mass production. Both are therefore very greatly interested in the widest possible demand for the commodity and, accordingly, very greatly interested in fixing the price, at the lowest point which will afford a reasonable profit to all those engaged in the sale and distribution of the commodity.

17. With respect, we suggest that the Commission's conclusions are based upon certain predilections rather than upon evidence submitted to the Commission; and those conclusions lose their validity when it is realized that they are based upon the conclusion that price maintenance agreements force the buyer to purchase at the maintained price; whereas the fact is, that the buyer in no case is compelled to purchase a price-maintained article, but is free to purchase a similar commodity from many other available sources.

The many other available sources naturally afford the competition which keeps the maintained price down to a competitive level.

18. To make illegal price maintenance agreements between the individual producer and distributor and the retail merchant is simply to force the great volume of trade into the hands of the highly capitalized retailers, such as the great departmental or chain stores. In competition with the price-maintained commodity, these chain stores and departmental stores, in many instances, produce their own "named brand" commodity, the price of which they absolutely control.

The real question before Parliament in dealing with the proposed legislation is whether they want to force great numbers of small retailers out of business, and aid in the flow of business to a limited number of departmental stores and chain stores. The latter result will do great harm to the commercial community; and, in our opinion, will produce no benefit to the consuming public.

19. In conclusion, it is submitted that price maintenance agreements between the individual producer or distributor and the retail merchant, steady the conditions in the trade, stabilize the solvency of the small retail merchant, prevent such small merchant being driven out of business by the departmental stores and chain stores, and enable the producer or distributor to maintain the standing and reputation of his commodity in the trade. The public, on the other hand, can buy any one of numbers of competitive articles; and if they do not want to purchase a premium product at the producer's price, they are not in any way hurt.



We submit that the conclusion of the English Court of Appeal should be adopted by yourself and the Government; and that the parties to commercial transactions should continue to be regarded as the best judges of what is reasonable between themselves.

## APPENDIX E

### CANADIAN ELECTRICAL MANUFACTURERS ASSOCIATION

126 DAVENPORT ROAD (AT BELMONT)

Toronto 5, Canada

November Thirtieth, 1951.

TO:

The Joint Committee, both Houses of Parliament  
to consider the Interim Report of the MacQuarrie  
Committee on Price Maintenance.

#### *Reference: Submission of Price Information.*

In acknowledgement of a letter received from Mr. A. L. Burgess, Clerk of the Committee, dated November 26th, we are submitting herewith information from certain companies showing the price information, which in our opinion would provide the Committee with sufficient data on which to base their judgment.

It was suggested at the hearings on Monday, November 26, covered by "Minutes of Proceedings and Evidence No. 6" that the Committee itself would formulate a list of questions to be answered. However, it was later determined by the Committee that the manner of presentation of this price information would be left to the manufacturers themselves, with the understanding that the Committee would confine its questioning to such representations as we would care to put forward.

To clarify the situation I might say that this letter was received at 11:00 p.m. on November 26, necessitating my return to Toronto on the 27 and therefore, my contacts with various member companies were subsequent to that date.

Since this is a national association with member companies spread out from British Columbia to Quebec, you will understand that the time factor did not permit submissions by all companies in the Appliance Industry. Even at the time of writing, therefore, some promised information was in transit in the mail, but was not received in time for submission to the Committee.

However, sufficient price information has been tabled, particularly in regard to what might be termed "major appliances", e.g., Refrigerators, Ranges and Washing Machines, to prove without doubt that the profit accruing to the manufacturers is entirely reasonable.

You will note that in many cases the manufacturers have shown their costs and profit margins both previous to the tax increases and subsequent thereto. Therefore, it will be noted that in several cases the result has been a loss to the manufacturer rather than a profit, since the excise tax was levied in April of this year.

#### COMPANY "A"

"Confirming our conversation re List Prices on Electrical Appliances.

The Distributor's profit on the Appliances which we manufacture is only 20% on the selling price, whereas the usual profit on non-electrical housewares is 25% on the selling price.

In view of the fact that the distribution of Appliances involves a certain amount of service, we feel that the present margin of profit is very low."

NOTE: In the following tables an asterisk indicates loss.

## JOINT COMMITTEE

## COMPANY "B"

## APPLIANCE—RANGE

	Price Prior to Tax Increase	Price After Tax Increase
Suggested Consumer List Price .....	\$349.00	\$399.50
Dealer's Cost .....	230.00	264.00
Distributor's Cost .....	204.15	233.70
Manufacturer's Cost .....	185.64	276.78
Sales and Excise Taxes .....	16.27	44.75
Total .....	201.91	321.53

*Percentage Markup*

Dealer to Consumer .....	51.7	51.3
Distributor to Dealer .....	12.7	12.9
Manufacturer to Distributor .....	1.0	27.3*

## APPLIANCE—RANGE—APARTMENT SIZE

	Price Prior to Tax Increase	Price After Tax Increase
Suggested Consumer List Price .....	\$239.75	\$279.00
Dealer's Cost .....	163.00	184.00
Distributor's Cost .....	141.45	163.25
Manufacturer's Cost .....	144.32	215.16
Sales and Excise Taxes .....	11.04	31.25
Total .....	155.36	246.41

*Percentage Markup*

Dealer to Consumer .....	47.1	51.6
Distributor to Dealer .....	15.2	12.7
Manufacturer to Distributor .....	9.0*	33.8*

## APPLIANCE—TURNOVER TOASTER

	Price Prior to Tax Increase	Price After Tax Increase
Suggested Consumer List Price .....	\$ 9.95	\$ 10.95
Dealer's Cost .....	6.35	7.00
Distributor's Cost .....	5.27	5.80
Manufacturer's Cost .....	5.33	7.73
Sales and Excise Taxes .....	.98	1.50
Total .....	6.31	9.23

*Percentage Markup*

Dealer to Consumer .....	56.7	56.4
Distributor to Dealer .....	20.0	20.0
Manufacturer to Distributor .....	16.5*	37.2*

NOTE: \* Indicates loss. •

## COMPANY "B"—Con.

## APPLIANCE—WASHER

	Price Prior to Tax Increase	Price After Tax Increase
Suggested Consumer List Price .....	\$159.50	\$184.50
Dealer's Cost .....	103.50	120.00
Distributor's Cost .....	89.75	103.75
Manufacturer's Cost .....	97.41	124.10
Sales and Excise Taxes .....	5.91	20.30
Total .....	103.32	144.40

*Percentage Markup*

Dealer to Consumer .....	54.1	53.7
Distributor to Dealer .....	15.3	15.6
Manufacturer to Distributor .....	13.2*	28.1*

## APPLIANCE—IRON

	Price Prior to Tax Increase	Price After Tax Increase
Suggested Consumer List Price .....	\$ 13.95	\$ 15.50
Dealer's Cost .....	8.95	9.95
Distributor's Cost .....	7.39	8.21
Manufacturer's Cost .....	6.98	10.11
Sales and Excise Taxes .....	1.38	2.13
Total .....	8.36	12.24

*Percentage Markup*

Dealer to Consumer .....	55.8	55.8
Distributor to Dealer .....	21.1	21.2
Manufacturer to Distributor .....	11.6*	33.0*

## APPLIANCE—REFRIGERATOR 7 Cu. Ft.

	Price Prior to Tax Increase	Price After Tax Increase
Suggested Consumer List Price .....	\$375.00	\$389.00
Dealer's Cost .....	255.00	265.00
Distributor's Cost .....	225.00	233.40
Manufacturer's Cost .....	192.86	275.02
Sales and Excise Tax .....	16.67	46.68
Total .....	209.53	321.70

*Percentage Markup*

Dealer to Consumer .....	47.0	46.8
Distributor to Dealer .....	13.3	13.5
Manufacturer to Distributor .....	7.4	27.4*

NOTE: \* Indicates loss.



## COMPANY "B"—Conc.

## APPLIANCE—REFRIGERATOR 9 Cu. Ft.

	Price Prior to Tax Increase	Price After Tax Increase
Suggested Consumer List Price .....	\$399.00	\$479.00
Dealer's Cost .....	270.00	325.00
Distributor's Cost .....	239.40	287.40
Manufacturer's Cost .....	222.72	317.60
Sales and Excise Taxes .....	17.74	57.48
Total .....	240.46	375.08
<i>Percentage Markup</i>		
Dealer to Consumer .....	47.8	47.3
Distributor to Dealer .....	12.8	13.1
Manufacturer to Distributor .....	.5*	23.4*

## COMPANY "C"

## PRODUCT PROFIT AND LOSS ANALYSIS

	Year 1950		Year 1951	
	Approx. 6 Cu. Ft. Cabinet	4 Burner Over-Oven Range	Approx. 6 cu. Ft. Cabinet	4 Burner Over-Oven Range
Retail Price .....	299.75	229.75	345.75	265.75
Less: 5 Year Protection Plan .....	5.00	—	5.00	—
Dealer Allowance .....	4.00	4.00	4.00	4.00
Factory List .....	290.75	225.75	336.75	261.75
Less: Average Discount .....	107.79	84.36	128.30	98.49
Gross Sale .....	182.96	141.39	208.45	163.26
Less: Sales Tax .....	11.97	9.81	14.98	11.80
Excise Tax .....	—	—	22.47	17.70
Freight Allowance .....	4.00	4.00	4.00	4.00
Co-Operative Advertising ...	4.36	3.39	5.05	3.93
Material Warranty .....	1.88	1.68	2.49	2.39
Factory Revenue .....	160.75	122.51	159.46	123.44
Cost of Sales .....	114.17	107.63	133.58	124.54
Gross Profit .....	46.58	14.88	25.88	1.10*
Gross Profit % .....	28.98	12.15	16.23	.89*
Selling Expenses .....	8.50	6.48	16.27	12.60*
Operating Profit .....	38.08	8.40	9.61	13.70*
Operating Profit % .....	23.69	6.86	6.03	11.10*
Income Tax .....	17.71	3.91	7.87	11.22*
Net Profit .....	20.37	4.49	1.74	2.48*
Net Profit % .....	12.67	3.67	1.09	2.01*

NOTE: \* Indicates loss.

## COMPANY "C"

## PRICE STRUCTURE

	Year 1950		Year 1951	
	Approx. 6 Cu. Ft. Cabinet	4 Burner Over-Oven Range	Approx. 6 cu. Ft. Cabinet	4 Burner Over-Oven Range
Retail Price .....	299.75	229.75	345.75	265.75
Dealer Cost .....	198.93	150.58	229.61	174.59
Dealer Profit .....	100.82	79.17	116.14	91.16
Dealer Profit % .....	33.63	34.46	33.59	34.30
Distributor Cost .....	166.66	125.52	192.23	145.53
Distributor Profit .....	32.27	25.06	37.38	29.06
Distributor Profit % ....	16.22	16.64	16.28	16.64

## COMPANY "D"

COMPARISON OF PRICES, COSTS, AND MARKUP RATES ON ELECTRIC REFRIGERATORS  
BEFORE AND AFTER TAX INCREASES

Prior to Tax Increase		After Tax Increase	
7½ cu. ft.	8½ cu. ft.	7½ cu. ft.	8½ cu. ft.

## (A) Prices

Suggested consumers price ....	\$344.50	\$374.50	\$397.50	\$432.50
Dealer's cost .....	232.35	248.90	268.15	287.50
Distributor's cost .....	192.25	205.50	221.80	237.30
Manufacturer's cost delivered ..	159.05	166.67	187.43	195.92
Sales and excise tax .....	13.97	14.95	43.61	46.72
Total cost delivered .....	\$173.02	\$181.62	\$231.04	\$242.64

## (B) Percentage Markup

	Per cent	Per cent	Per cent	Per cent
Dealer to consumer .....	48.27	50.46	48.24	50.43
Distributor to dealer .....	20.86	21.12	20.90	21.15
Manufacturer to distributor .....	11.11	13.15	4.00*	2.20*

NOTES: (1) Manufacturer's cost does not include expenditures of a capital nature, interest, or income taxes;

(2) Manufacturer's costs after tax increase do not reflect the current situation caused by progressive decline in volume and increases in costs of labour and material.

E. & O.E.

November 29, 1951.

NOTE: \* Indicates loss.

## COMPANY "E"

January-June 30, 1950

List (including 8 per cent sales tax) .....			\$86.50
Distributors' 40 per cent and 10 per cent equal....	\$39.79	Balance	46.71
Freight allowance equals .....	.96	"	45.75
Sales tax 8/108 equals .....	3.39	"	42.36†
Manufacturer's cost for period .....			34.75
Manufacturer's profit .....			\$ 7.61

May-October, 1951

Suggested list of (includes 10 per cent sales and 15 per cent excise).....			\$100.00
Distributors' 40 per cent and 10 per cent equal....	\$46.00	Balance	54.00
Freight allowance equals .....	1.08	"	52.92
Sales tax 10/125 equals .....	4.23	"	48.69
Excise tax 15/115 equals .....	6.35	"	42.34†
Manufacturer's cost for period .....			42.17
Manufacturer's profit 17 cents (or) 17 per cent.			

May-October, 1951

Suggested list price (10 per cent sales and 25 per cent excise).....			\$107.85
Distributors'—40 per cent and 10 per cent equal....	\$49.61	Balance	58.24
Freight allowance equals .....	1.08	"	57.16
Sales tax 10/135 equals .....	4.23	"	52.93
Excise tax 25/125 equals .....	10.59	"	42.34†
Manufacturer's cost for period .....			42.17
Manufacturer's profit 17 cents.			

This company reports a third quarter loss in 1951 .....	\$9,896.66
This company reports Oct. 1951 loss .....	3,298.88

Loss July-October inclusive ..... \$13,195.54

†Manufacturer's net income.

## COMPANY "F"

Average net profit for 1950—8.7 per cent on sales.

(Range on various appliances from 6.5 per cent loss to 14.2 per cent profit.)

After tax increase—Spring 1951—average loss 7.7 per cent on sales.

Electrical Appliance

(Suggested list) Dealer receives from customer .....	\$13.95
Distributor receives from dealer .....	9.30
Manufacturer receives from distributor .....	7.53
Less tax and transportation .....	.87
Manufacturer's net f.o.b. ....	6.66

1950 cost \$6.03—net profit per unit 63 cents.

At present time cost in own warehouse \$7.17—loss per unit 51 cents.

NOTE: \* Indicates loss.



## COMPANY "G"

## Discounts to Retail Dealers from Manufacturer's Suggested Retail Prices

	Minimum Discount	Maximum Discount
	per cent	per cent
Refrigerators .....	27	36
Ranges .....	25	35
Washing machines .....	30	38
Small appliances .....	25	40

This manufacturer sells his large appliances direct to dealers, and not through distributors. He gives distributors a discount of 46 per cent on small appliances.

His variation in dealing discounts between minimum and maximum are based on the following factors:

1. A lesser discount on low-priced utility models.
2. The volume of the dealer's purchases.
3. The efficiency of the dealer in sales promotion, sales training, store location, and in recognition of expenses incurred therein.

November 29/51

## Profits earned during the years 1949 and 1950 and 10 months of 1951 on Appliances

## Expressed in per cent of Manufacturer's Selling Price

Federal plus provincial income tax on corporation taxable income was 40 per cent in 1949, 41.6 per cent in 1950, and is 52.6 per cent in 1951.

	Net profit before income tax expressed in per cent of sales			Net profit after income tax expressed in per cent of sales		
	1949	1950	1951 (10 mos.)	1949	1950	1951* (10 mos.)
Refrigerators ....	0.7	5.1	1.0	0.42	3.0	0.5
Ranges .....	10.1	13.1	6.9	6.1	7.7	3.3
Washing machines	14.3 (loss)	5.5	5.4	(loss)	3.2	2.6
Other appliances.	11.5	11.2	10.6	6.9	6.5	5.0
Total all appliances	4.5	7.4	4.1	2.7	4.3	1.9

November 29/51

## COMPANY "K"

This Company does not sell through Distributors.

## Ranges

	Cost	Average Selling Price	Consumer List
Jan. 1/51 .....	162.52	183.58	274.00
Nov. 30/51 .....	216.21	213.73	319.00

## Refrigerators

	Cost	Average Selling Price	Consumer List
Jan. 1/51 .....	192.85	233.83	349.00
Nov. 30/51 .....	244.40	247.23	369.00

NOTE: \* Indicates loss.

## COMPANY "L"

## Electric Kettles

	Cost	Selling Price	Jobber's Price	Consumer List
Jan. 1/51 .....	10.14	8.27	10.33	15.50
Dec. 1/51 .....	11.86	8.80	11.00	16.50

## COMPANY "M"

Amount Retained By Manufacturer From Each Dollar Sale  
To Distributor By Product

Product	Year		1950	Year		1951 to date
	Net before Income Taxes	Deduct Income Taxes	Net Retained	Net before Income Taxes	Deduct Income Taxes	Net Retained
A .....	.228	.095	.133	.230	.115	.115
B .....	.235	.098	.137	.223	.112	.111
C .....	.120	.050	.070	.130	.065	.065
D .....	.084	.035	.049	.076	.038	.038
E .....	.003	.001	.002	.082*	....	.082*
F .....	.217	.091	.126	.213	.107	.106
G .....	.243	.101	.142	.182	.091	.091
H .....	.207	.086	.121	.176	.088	.088
I .....	.035	.015	.020	.391*	....	.391*

Amount Retained By Manufacturer From Each Dollar Sale to Consumer  
By Product

Product	Year		1950	Year		
	Net before Income Taxes	Deduct Income Taxes	Net Retained	Net before Income Taxes	Deduct Income Taxes	Net Retained
A .....	.118	.049	.069	.123	.062	.061
B .....	.121	.050	.071	.117	.059	.058
C .....	.061	.025	.036	.070	.035	.035
D .....	.044	.019	.025	.040	.020	.020
E .....	.001	.0005	.0005	.041*	....	.041*
F .....	.115	.048	.067	.116	.058	.058
G .....	.135	.056	.079	.099	.050	.049
H .....	.144	.060	.084	.099	.050	.049
I .....	.019	.008	.011	.136*	....	.136*

It is felt that within the short time given, sufficient factual information is submitted herewith to prove, as stated to the Joint Committee, that profits in the Appliance Industry to put it mildly, have not been unreasonable. It is hoped that the presentation of these figures will assist the Committee in its recommendation on "Resale Price Maintenance."

Yours very truly,

B. NAPIER SIMPSON,  
General Manager.

NOTE: \* Indicates loss.















GOVT PUBNS

BINDING SECT. JUL 2 1980



